



COMPETITION COMMISSION OF INDIA

Case No. 12 of 2020

In Re:

**Vardaan Agriculturist Development Co-operative Society Limited
Through its Chairman Shri Amarpal,
Lane No. 5, Bachan Singh Colony,
Muzaffarnagar -251001
Uttar Pradesh**

Informant

And

**Deputy Commissioner and Deputy Registrar (Co-operative),
Office of the Joint Commissioner and Joint
Registrar (Co-operative), Saharanpur Division
Behind Ganna Bhawan,
Near IMA Hall,
Saharanpur,
Uttar Pradesh**

Opposite Party No. 1

**Assistant Commissioner and Assistant Registrar (Co-operative),
Muzaffarnagar
III floor, Vikas Bhawan,
Muzaffarnagar,
Uttar Pradesh**

Opposite Party No. 2

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



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

1. The present information is filed by Vardaan Agriculturist Development Cooperative Society Limited (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Deputy Commissioner and Deputy Registrar (Cooperative) Saharanpur Division (hereinafter, “**OP-1**”) and Assistant Commissioner and Assistant Registrar (Cooperative), Muzaffarnagar (hereinafter, “**OP-2**”) (collectively, hereinafter referred to “**Opposite Parties/OPs**”) alleging contravention of provisions of the Act.
2. The Informant is stated to be a multi-state cooperative society established in 2005 under Section 7 of the Multi State Co-operative Societies Act, 2002 (hereinafter, the “**MSCS Act, 2002**”). The area of operation of the Informant is stated to be confined to the states of Uttar Pradesh, Haryana, Punjab and Rajasthan. The bye-laws of the Informant are stated to be registered on 16.03.2005 with the Joint Secretary to the Government of India and the Central Registrar of Cooperative Societies, Department of Agriculture and Co-operation, Ministry of Agriculture and Farmer Welfare.
3. Deputy Commissioner and Deputy Registrar (Cooperative) Saharanpur Division (hereinafter, “**OP-1**”) and Assistant Commissioner and Assistant Registrar (Cooperative), Muzaffarnagar (hereinafter, “**OP-2**”) are the officials of Registrar Cooperative in the State of Uttar Pradesh.
4. The Informant has stated that it is a member and shareholder of the national cooperative called Krishak Bharati Cooperative Limited (hereinafter, “**KRIBHCO**”) and holds a valid wholesale fertilizer license issued by KRIBHCO for selling KRIBHCO’s fertilizers in the district of Muzaffarnagar and Saharanpur in the State of Uttar Pradesh. One of the objectives of the Informant society, as per its registered bye-laws, is to make available branded agricultural inputs such as fertilizers, seeds, pesticides, agricultural implements, sprayers at farmer’s door step at the lowest price. Towards this, the Informant opened its retail sales point/centers in the villages in the districts of Muzaffarnagar, Saharanpur, Shamli, and Baghpat in the State of Uttar Pradesh clearly mentioning that these branches are sales centres of the Informant.



5. The Informant has averred that to break the monopoly of Primary Agriculture Credit Cooperative Societies (“**PACCS**”), KRIBHCO appointed the Informant as its distributor to sell its fertilizers. As per the Informant, the farmers who did not wish to pay interest on credit to PACCS could buy KRIBHCO fertilizers from the Informant on cash payment, which as per the Informant was a relief for the farmers as they did not have to pay interest on the credit purchase of KRIBHCO fertilizers. The Informant has claimed that its appointment purportedly boosted the fertilizer business turnover of KRIBHCO and also resulted in increased choice to farmers *i.e.* purchase KRIBHCO fertilisers either on cash basis or on credit basis depending on their requirement/choice.
6. The Information has stated that PACCS, District Cooperative Development Federation (**DCDF**) and Pradeshik Co-operative Federation (**PCF**) are cooperative societies of the Government of Uttar Pradesh which are shareholders and member cooperatives of KRIBHCO. It is further stated that DCDF and PCF, present in every district of Uttar Pradesh, are stock holders of products of KRIBHCO and are also appointed by KRIBHCO as distributors in every district in the State of Uttar Pradesh to distribute KRIBHCO products (fertilisers) including distribution to PACCS. PACCS sells KRIBHCO fertilizers to farmers on credit all over the districts through its strong network of sale points. In this context, the Informant also averred that DCDFs and PCFs in each district are controlled by Deputy Commissioner and Deputy Registrar (Co-operative) *i.e.* OP-1 through Assistant Commissioner and Assistant Registrar (Cooperative) *i.e.* OP-2.
7. The Informant has alleged that OP-1, being unhappy with the freedom and choice available to farmers, wanted to maintain PACCS’s monopoly in the sale of KRIBHCO fertilizers. Thus, OP-1 issued directions on 21.12.2019 to OP-2 to further issue directions to the DCDF and PCF not to release or dispatch material to the Informant in the districts of Muzaffarnagar and Saharanpur in case KRIBHCO invoices its fertilizers to the Informant. Accordingly, OP-2 issued directions to the respective PCF and DCDF to not to supply to the Krishi Pragati Kendra, Behra Sadat



(outlet of the Informant) as it was adversely affecting the business of Kisan Seva Cooperative Society Limited, Kakrauli (a sales center of PACCS).

8. In support of its allegations, the Informant has provided copies of the orders issued by OP-1 and OP-2 (in Hindi language) and the translated true copies of the same in English language.
9. In the above context, the Informant has also stated that as per Section 4 of the MSCS Act, 2002, Central Registrar is the controlling authority for multi-state cooperative societies and no State Government officer is empowered to exercise powers in relation to any national cooperative society. As per the Informant, KRIBHCO is a national cooperative as per the second schedule of the MSCS Act, 2002 and, thus, OP-1 and OP-2 are not authorised to impose any limitations/ restrictions on the business of the Informant and KRIBHCO.
10. In view of the foregoing, the Informant has alleged contravention of the provisions of the Act by the OPs and requested the Commission to take immediate action against the OPs. The Informant has further requested the Commission to impose penalties on the OPs and recover losses from them to compensate the Informant. Along with that, the Informant also requested to send a copy of the orders to the Commissioner and Registrar Cooperative of Uttar Pradesh to enable the said authorities to issue departmental directives to implement the provisions of the Act.
11. Besides the above prayer, the Informant has also stated that due to the ban imposed by PCF and DCDF on the supply of KRIBHCO fertilizers to the Informant, Informant's business of sale of KRIBHCO fertilizers in Muzaffarnagar and Saharanpur Districts has reduced from ₹1.5 Crore per month to zero since December 2019. The Informant has also averred that it is on the verge of closing its sales centers in the above said districts which will make hundreds of people unemployed. The Informant has stated that it is facing irreparable damage day by day and balance of convenience lies in its favour. The Informant thus sought interim relief under Section 33 of the Act that ban imposed by PCF and DCDF on supply of KRIBHCO fertilizers to the Informant should be removed with immediate effect.



12. The Commission notes in the facts and circumstances of the case that the Informant and KRIBHCO are in a distributor-manufacturer relationship but the directions of refusal to supply have originated not from the manufacturer but from the state machinery *i.e.* officials of Registrar Cooperative, Uttar Pradesh. Since, the OPs arrayed by the Informant are the officials of the State Government of Uttar Pradesh, therefore, considering the facts and circumstances of the case, the Commission provided KRIBHCO and Registrar (Cooperative) Uttar Pradesh, also the opportunity to file their respective responses on the Information filed. KRIBHCO filed its submissions dated 30.07.2020 confirming that Informant is its member society and KRIBHCO will abide by the decision of the Commission. On the directions of Registrar (Cooperative), OPs filed detailed joint submissions dated 31.07.2020 in Hindi language.

13. The Commission notes the detailed joint responses filed by OPs in response to the information filed stating that they have acted within the authority delegated to them by the Registrar (Cooperative), Uttar Pradesh and authorities subordinate to it in the hierarchy. It is further stated that PACCS function on the basis of cooperative, democratic, self-dependent principles. OPs asserted that this is not the case with the Informant and it is denying giving of information relating to its activities to the OPs under the guise of Informant being governed by the Central Registrar as provided in the MSCS Act, 2002. OPs further stated that PACCS are also members of KRIBHCO, and KRIBHCO is bound to give preference to PACCS centre in distribution of fertilisers of cooperative sector as per the extant policy. The OPs have further averred that the Informant has misguided the Commission by stating that it only sells on cash basis whereas an impression has been sought to be created that PACCS sells only on credit basis. OPs have stated that PACCS centers sell agri-inputs both on cash as well as credit basis. To demonstrate this, the OPs have provided the details of sale of fertilisers by PACCS in Muzzafarnagar district which indicated that around 72 % sale by these PACCS was made on cash basis in FY 2019-20. The OPs have provided copies of circulars/ office orders/ correspondences issued from time to time by Registrar, Cooperative, Uttar Pradesh and its subordinate authorities which directs/ suggests not to allow franchisees outlets in the area of active PACCS thereby enhancing the cooperative principles. Franchisees of other cooperatives may be



allowed in areas where PACCS structure is weak or inactive. The OPs relied upon the data pertaining to sale of KRIBHCO fertilisers by PACCS in Muzzafarnagar district to demonstrate that supply and sale of fertilisers by KRIBHCO to PACCS has declined from 42% in FY 2017-18 to 19% in FY 2019-20.

14. Considering the nature of the information and allegations, the Commission also deemed it apt to make a reference under Section 21A of the Act to the Joint Secretary (Cooperative) & Central Registrar, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture, Government of India (**‘Statutory Authority’**) to seek its opinion before proceeding further in the matter. The said statutory authority gave its opinion dated 02.11.2020, *inter alia*, stating that *any multi state cooperative society registered under MSCS Act, 2002 functions as autonomous cooperative organizations accountable to its members and functions as per provisions of MSCS Act, 2002, MSCS Rules, 2002 and Bye-laws in which the roles and powers of the members of the general body of the society and Central registrar of Cooperative Societies are defined in the Act.* However, it also stated that the Central Registrar has delegated certain powers like appointment of arbitrators/power of inspection etc under Sections 84 and 108 of MSCS Act, 2002, respectively, to the Registrar of Cooperative Societies of the States/Union Territories for multi-state cooperative societies located or operational within their jurisdiction. The Statutory Authority also clarified that though the Informant, *being a multi-state cooperative society, comes under the jurisdiction of Central Registrar of Cooperative Societies. However, Registrar of Cooperative Society of respective state, in furtherance of the principle and spirit of the cooperative sector could give any direction to society in the state.*
15. The Commission after examining the respective responses received decided to hold a preliminary conference with the Registrar Cooperative, Uttar Pradesh, KRIBHCO and the Informant on 08.04.2021 through Video Conferencing (VC) which conference at the request of the officials of Registrar Cooperative was subsequently held on 12.05.2021.



16. On 12.05.2021, OP-1, OP-2, authorised representative of KRIBHCO (Mr. V.K. Tomar, DGM – Marketing) and the Informant, through its representative Shri Amarपाल Singh, alongwith counsel were present. The Commission on the said date heard the aforementioned persons at length and decided to pass an appropriate order in due course. They were also given liberty to file their written submissions in the matter.
17. The Commission notes that OPs have filed their post hearing submissions dated 25.05.2021 in Hindi and KRIBHCO, *vide* email dated 23.05.2021, submitted details of sales made to the Informant society since 2017-18 till date. The Informant also filed its response to the submissions of the OPs *vide* email dated 21.06.2021.
18. The Commission has given a careful consideration to the information filed, oral and written submissions of the Informant, OPs and KRIBHCO along with the opinion received from the Statutory Authority, as aforementioned and notes that the gravamen of allegations of the Informant is issuance of directions by the officials of Registrar (Cooperative), Uttar Pradesh to DCDF and PCF to stop supply of KRIBHCO fertilisers to the Informant in order to favour the PACCS.
19. Furthermore, the Commission notes that the Informant though has submitted certain facts and allegations but has not pointed to the contravention of any specific provision of the Act in the information.
20. At the outset, for the purpose of an examination under the provisions of the Act , it is crucial to ascertain whether OP-1 and OP-2 are enterprise(s) as defined under Section 2(h) of the Act. The Commission notes that the erstwhile Hon’ble Competition Appellate Tribunal, while deciding an appeal filed by *The Malwa Industrial & Marketing Ferti-Chem Cooperative Society Ltd.* bearing Appeal No. 25/2015 and IA No. 43/2015, *vide* order dated 30.04.2015, held the Registrar Cooperative, Punjab as enterprise and the relevant excerpt is as below:

“10. The definition of the term ‘enterprise’, as contained under Section 2(h) of the Act, reads as under:-



“(h) “enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

.....

11. The aforesaid definition is very wide and takes within its fold a person or a department of the Government engaged in any activity relating to the production, storage, supply, distribution, acquisition or control articles

12. The definition of “goods” contained in Section 2(i) is also very wide. ...

13. Though the Commission briefly analyzed the definition of the term ‘enterprise’, it failed to give due weightage to the words ‘relating to the production, storage, supply, distribution, acquisition or control of any articles or goods appearing in Section 2(h) and was swayed by the fact that the Registrar had issued the disputed circulars in exercise of its statutory powers. In my view, even though the Registrar, Cooperative Societies, Punjab had issued circulars in the purported exercise of his powers under the Punjab Cooperative Societies Act 1961 and the Rules and Regulations framed thereunder, the fact remains that the same were definitely relating to the goods which could be purchased by Primarily Agricultural Societies from Respondent No. 6 [Punjab MARKFED] only. Therefore, the Registrar would fall with the ambit of term ‘enterprise as defined in Section 2(h) for the purpose of the Act



and will be amenable to the jurisdiction of the Commission.”
(emphasis added)

21. The Commission observes from the written submissions dated 31.07.2020 of the OPs that nature of activity carried out by the Registrar Cooperative in context of fertilisers is its receipt, storage, dispatch, allocation *etc.* before and during every crop season. The Commission also notes that the Registrar, by virtue of regulating the supply of the fertilisers in the State of Uttar Pradesh, by issuing instructions and directives, is playing a crucial role in distribution of fertilisers. Therefore, in view of the foregoing discussion, the Commission holds the Registrar (Cooperative) and the officials functioning under it *viz.* OP-1 and OP-2 to be enterprise(s) and amenable to the jurisdiction of the Commission under the Act.
22. With regard to the specific facts and circumstances of the present matter and the issues involved, the Commission is of the opinion that an exact delineation of relevant market or an assessment of dominance may not be pertinent.
23. The Commission notes that the main issue leading to filing of the present information relates to alleged non-supply of KRIBHCO fertilisers to the Informant and thereby seriously hampering its business, on instruction/directions of the officials of the Registrar (Cooperative), Uttar Pradesh. The Commission notes three key points raised by the counsel of the Informant: firstly, KRIBHCO being a national cooperative is not amenable to the jurisdiction of any officer of the state government in terms of Section 4 of the MSCS Act and the Informant being a multi-state cooperative society comes under the purview of Central Registrar only. Secondly, the supply of fertilizer was stopped to the Informant society in the garb of a circular C-65 dated 20.11.2013 issued by the Registrar Cooperative, Uttar Pradesh which purportedly instructed on non-supply of fertilisers of cooperative sector to private shops or franchisees. The OPs have hastily arrived at a conclusion that the sales centers of the Informant operating in Saharanpur and Muzaffarnagar are private shops/ franchisees, in contrast with the principles of cooperative, without conducting any inquiry or investigation into the working of the Informant society. And lastly, the OPs conduct is distorting



level playing field in favor of PACCS to the detriment of cooperative societies like that of the Informant.

24. With respect to issue of jurisdiction, the Commission notes the submissions of the OPs that the power to carry out inspection of the multi state cooperative societies in terms of Section 108 of the MSCS Act has been duly delegated by the Central Registrar to the respective State Registrar in which such society is located. The said fact has been corroborated by the Central Registrar in its opinion.
25. The authorised representative of KRIBHCO claimed during the conference that there has been no refusal or stoppage of supply of fertilizers to the Informant by KRIBHCO. Through its written submissions dated 23.05.2021, KRIBHCO has submitted that it has been supplying its products such as *urea, IMP DAP, COMPOST, Zinc Sulphate-33%, Neem Coated Urea etc.* to the Informant since 2017-18. However, the Commission notes from the sale details submitted by KRIBHCO, that the sale of urea to the Informant society in Muzaffarnagar district was 4147 MTs in 2018-19 which rose to 5322 MTS in 2019-20 and has reduced to zero in FY 2020-21, though some other less popular alternatives have been made available to the Informant society.
26. During the hearing, with regard to the assertions of the counsel of the Informant pertaining to issue of directions of stopping supply to the Informant society in terms of Circular C-65 without any investigation/ inquiry by the OPs, the OPs stated that they issued certain letters to the Informant, dated 20.07.2020, which have been filed with the Commission after the preliminary conference. In the said letter OP-1 has sought from the Informant society certain details, such as activities carried on by it, place of business, number of members, audit of records *etc.* Besides the said letter, the OPs has also filed before the Commission a copy of letter dated 27.07.2020 written by the Upar District Cooperative Officer to OP-1 indicating that the Informant society has declined to provide any details on the pretext that it has nothing to do with the cooperative department and more so a *lis* between the department and the Informant society is pending consideration of the Commission. In this regard, the Commission, at the outset, observes that the aforesaid letters were issued by the OPs only after filing of the present information and do not indicate that any enquiry was conducted before



issuance of the direction in relation to the activities of the Informant. Nevertheless, the Commission notes that the aforesaid circular C-65 dated 20.11.2013 was issued by the Registrar Cooperative, Uttar Pradesh to all the officials of cooperative department across the State of Uttar Pradesh directing them not to make available the fertilizer of cooperative sector (IFFCO/KRIBHCO) to franchisees and private shopkeepers *etc.* The Commission notes that similar circulars such as C-64 dated 22.03.2011 and C-66 dated 20.01.2010 have been issued by the Registrar Cooperative directing its officials to strengthen the distribution of agricultural inputs through PACCS and not to allow any franchisee or other sale centers in the area of active PACCS. The Commission further notes that there was no such embargo on establishment of franchisees or other sale centres in the area where PACCS is not active. The Commission takes note of the submissions of the OPs that PACCS are the primary units for distribution of credit and agricultural inputs to farmers across the State, and formed to provide for social and economic development of its member farmers through self-help and mutual aid in accordance with the principles of cooperative. With regard to the assertion of giving preference to PACCS in distribution of KRIBHCO fertilizers, the Commission notes the oral submissions of OPs that PACCS can sell the fertilisers of IFFCO and KRIBHCO only and not those manufactured by other companies, whereas, there is no such restriction on other cooperative societies including the Informant, who are free to sell fertilizers of other entities. During the hearing, the authorised representative of KRIBHCO stated that there are two channels for distribution of fertilisers manufactured by KRIBHCO, one is cooperative and another is private. Within cooperative setup, KRIBHCO's products including fertilisers are sold through PACCS, CANE societies and other cooperative societies such as that of the Informant. The Commission notes that the KRIBHCO does supply its fertilisers through private channel, which indicates that the fertilisers of the cooperative sector are being sold through channels other than cooperative societies.

27. The Commission notes that the Informant had emphasized that the choice of farmers has been curtailed by non-supply of fertiliser to the Informant as the Informant sells on cash basis, whereas the PACCS sell on credit basis. The Informant was also directed by the Commission to clearly detail out the mode of sale of fertilisers. To this,



the Informant, *vide* submissions dated 28.01.2021, submitted that based on his personal experience, the PACCS disburses 75% of the agricultural credit in the form of cash and 25% in the form of fertilisers regardless of the quantity of fertiliser needed by a farmer; and while repaying back the agricultural credit so availed, the farmers have to pay certain interest. According to Informant, if the Informant exited then choice to farmers to purchase fertilizers on cash basis could be lost. This assertion of the Informant was vehemently denied by the OPs during the hearing and the OPs filed written submissions dated 25.05.2021 providing details of loan disbursed by PACCS to certain farmers in the district of Muzaffarnagar. In this regard, the Commission observes that out of 1,06,574 farmers availing credit from PACCS, the OPs have provided details of some 70 farmers to whom the loans were disbursed by PACCS in the form of cash in the range of 75 to 100 percent. Also, this figure pertains to loans in FY 2020-21 and not of an earlier period. The Commission also notes from the response of the OPs that the total fertilizers sold in FY 2017-18 were 26,302 MT which increased to 29,930.76 MT in 2018-19 and to 28,288 MT in FY 2019-20, which to some extent shows that the market also expanded around the time when Informant entered into it.

28. The Commission notes that the alleged distortion of level playing field in favour of PACCS has arisen due to policy formulated to strengthen PACCS centers at the grass root level for the larger cause of making available the agricultural inputs including fertilisers of cooperative sector (IFFCO and KRIBHCO) to the farmers at reasonable/subsidised prices. The Commission though observes that presence of other cooperative society(ies) in the area of PACCS has the potential to enhance the choices available to farmers in terms of ease of availability and better service, yet in its *prima facie* view, the restrictions if any have been brought in furtherance of a policy of the State Government, stated to be in spirit of the cooperative movement, which cannot be said to be in contravention of the provisions of the Act. The Commission thus does not wish to embark on an enquiry as to whether such a policy is *dehors* the cooperative principles and as to whether the activities of the Informant society fall outside the cooperative movement. These are issues which can be best decided by the competent authority/forum under the provisions of the MSCS Act, Uttar Pradesh Co-operative Societies Act, 1965 and rules or other relevant laws, if any than under the provisions



- of the Competition Act, 2002. Therefore, the Commission notes that such administrative directions emanating from the implementation of a policy decision does not warrant investigation under the provisions of the Act.
29. The Commission also notes the submissions of the OPs made during the course of the Preliminary Conference that they would discuss all the issues involved with the Informant and find an appropriate course of action in best interests of farmers, to which the Informant also expressed its satisfaction stating that it does not desire any conflict and would also like to conduct its activities in the best interest of all stakeholders.
30. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case for causing investigation into the matter, and the information filed is directed to be closed forthwith under 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 same is also rejected.
31. The Secretary is directed to communicate to the Informant, OPs, Registrar (Cooperative), Uttar Pradesh and KRIBHCO, accordingly.

Sd/-
Mr. Ashok Kumar Gupta
Chairperson

Sd/-
Ms. Sangeeta Verma
Member

Sd/-
Mr. Bhagwant Singh Bishnoi
Member

New Delhi
Dated: 14/07/2021