



COMPETITION COMMISSION OF INDIA

Case No. 41 of 2016

In Re:

Shri Prem Prakash

Informant

And

Power Grid Corporation of India Ltd.

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Dr. M. S. Sahoo
Member**

**Mr. Justice G. P. Mittal
Member**



Appearances during the preliminary conference on 26th July 2016:

For informant: Informant in-person

For the Opposite Party: Shri Ramji Srinivasan, Sr. Advocate
Shri Vinay Kumar Sanduja, Advocate
Shri Shashi Vansh Bahadur, Advocate
Shri Kunal Mehra, Advocate
Shri Rajesh Wadhwa, DGM
Shri R. P. Padhi, Manager

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

1. Shri Prem Prakash (“**Informant**”) has filed the present information under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against Power Grid Corporation of India Ltd. (“**OP**”), *inter-alia*, alleging contravention of the provisions of Section 4(1) of the Act.
2. The Informant in the present case is an individual residing at Bina, Madhya Pradesh. The Informant runs an engineering testing laboratory and provides testing services throughout Madhya Pradesh. The laboratory of the Informant is stated to be accredited as per ISO/IEC-17025 by Accreditation Commission for Conformity Assessment Bodies (“**ACCAB**”). As per the information, ACCAB is claimed to be an accreditation body which is the same as National Accreditation Board for Testing and Calibration Laboratories (“**NABL**”) which provides accreditation services in India.
3. OP is a ‘*navratna*’ central public sector enterprise and is a listed company since 2007. OP is engaged in the transmission of electricity throughout India. As per the information, OP constructs sub-stations to provide transmission services and lays down transmission lines through



towers. For constructing sub-stations and laying transmission lines, OP invites tenders. While the work is executed through contractors, the supervision of the work is carried out by OP itself. OP ensures the quality of work done by getting the materials being used in construction tested from NITs and private testing laboratories.

4. The primary grievance of the Informant concerns the policy/guidelines of OP regarding the approval of third party labs for testing of materials used in the construction of transmission lines/sub-stations. As per the information, OP issued guidelines/instructions to get the materials tested from NABL approved laboratories. Further, pursuant to the clarification sought by the Informant, he was informed by OP, *vide* reply letter dated 31st July 2015, that “...in addition to already accepted labs/institutions working with POWERGRID, Third Party Labs accredited by any agency which operates in accordance with the requirements of ISO/IEC 17011, having full membership & MRA [Mutual Recognition Arrangement] of ILAC [International Laboratory Accreditation Cooperation]/ APLAC [Asia Pacific Laboratory Accreditation Cooperation] are acceptable to provide testing/ calibration services to POWERGRID ” (emphasis added).
5. The Informant has contended that by insisting testing through NABL accredited labs, OP has put the laboratory of the Informant and other accreditation bodies out of competition. It has been further contended that to create monopoly of accreditation body, OP is stated to have put the purported unfair condition that the accreditation body must be a full member and MRA of ILAC/APLAC. The Informant has alleged that ‘it seems that there is some understanding between NABL and Respondent that all the laboratories who want to do business with Respondent have to approach NABL and thereby NABL will charge huge amount of fees



from them'. The Informant has submitted that in the absence of the condition that third party laboratories should be accredited by NABL, many more accreditation bodies can come into the market.

6. In support of the allegations levelled in the information, the Informant has also furnished copies of various letters, replies provided by OP under the RTI Act 2005 or otherwise, guidelines of OP for approval of third party laboratories, *etc.* The brief details of these documents are as follows:

6.1 It has been averred that the inter office memo dated 20th October 2014 issued by the Vigilance Department of OP requires materials to be tested from laboratories approved by NABL. This according to the Informant illegally helps NABL to create monopoly in laboratory accreditation market even though other accreditation bodies are also present in India.

6.2 *Vide* letter dated 8th August 2014, the Informant informed OP that NABL is nothing but an accreditation body which accredits labs as per ISO/IEC-17025-2005. Further, any accreditation body which operates its system as per ISO/IEC-17011 can accredit a laboratory as per ISO/IEC-17025-2005.

6.3 The Informant has alluded that accreditation business in India is supervised by Quality Council of India (“QCI”) and in response to the RTI application filed by the Informant, QCI *vide* letter dated 29th March 2016 has, *inter-alia*, clarified that ‘*It is not mandatory for an accreditation body to be a member of QCI or ILAC/ APLAC/ IAF to run accreditation programme in India*’



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- 6.4 *Vide* letter dated 10th October 2015, the Informant informed OP that the Central Government, in consultation with the Bureau of Indian Standards (“**BIS**”), may: (a) notify any article or process of any scheduled industry which shall conform to the Indian Standards; and (b) direct the use of standard mark under a license as compulsory on such article or process. However, the Central Government has not notified any international standard mandatory.
- 6.5 Pursuant to the RTI application of the Informant seeking the following information: ‘*is it mandatory for the laboratory to be accredited as per ISO/IEC-17025 by NABL for providing services to PGCIL Project*’, OP, *vide* its letter dated 7th December 2015, is stated to have replied ‘*NO*’.
- 6.6 Based on the copy of the guidelines issued by OP for approval of third party laboratories for testing of materials used in constructing transmission lines/ substations. The Informant claims that the said guidelines mandate that third party laboratories shall be accredited by NABL.
7. The Commission considered the information in its Ordinary Meeting held on 8th June 2016 and decided to have preliminary conference with the Parties.
8. Subsequently, the Informant filed additional information on 9th June 2016. A copy of the additional information was forwarded to OP on 12th July 2016. In the additional information, the Informant has reiterated the clarifications provided by QCI that (a) it is not mandatory for accreditation body to be the Member of QCI or ILAC/APLAC/IAF to



run accreditation programme in India; and (b) ILAC/APLAC do not authorise accreditation bodies to provide accreditation services in any country, including India. It has been claimed that many PSUs/Government Departments do not require NABL accreditation, rather prescribe compliance of ISO standard as the requirement. The Informant has also alleged that NABL is making false propaganda that it is a part of Department of Science and Technology and it is the sole accreditation body authorised by Government of India.

9. The Commission had preliminary conference with the parties on 26th July 2016 and directed OP to file written submissions latest by 4th August 2016. Pursuant to the said direction, OP filed its written submission on 3rd August 2016.
10. During the preliminary conference, the Informant reiterated the allegations levelled in the information and additional information. The brief of the submissions/contentions of OP made during the preliminary conference and in the subsequent written submission are: (a) the allegations of the Informant do not fall within the ambit of the Act; (b) the grievances of the Informant are primarily against NABL and nothing has been brought on record to suggest any contravention by OP; (c) there could be three relevant markets in the facts and circumstances of the case *viz.* civil construction business works in relation to the transmission sector in India or services of third party laboratories for testing of construction materials in India or services of accreditation of laboratories in India. OP is not dominant in any of these relevant markets and it is neither engaged in third party lab services nor lab accreditation services; (d) standards/ requirements prescribed by OP for testing laboratories are with a view to ensure quality and also to address vigilance issues; and (e) even the lab recognition scheme of BIS stipulate the requirement of



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the accreditation agency being a full member of APLAC and/or ILAC. It has been claimed that OP is a consumer of services and must be allowed to exercise its consumer choice and freely select between competing products or services. Submissions have also been made regarding the details and significance of membership of ILAC and APLAC, different kinds of membership offered by ILAC and the qualitative difference in the professional abilities of a full member and associate member of ILAC.

11. The Commission has given a careful consideration to the information and other material available on record. The Commission has also heard the parties during the preliminary conference held on 26th July 2016.
12. The Informant has alleged abuse of dominant position by OP in contravention of the provisions of Section 4 of the Act. For the purposes of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter, it is required to assess whether OP enjoys a position of strength required to operate independently of the market forces in the relevant market. Only when such a position is enjoyed by OP, it is imperative to examine whether the impugned conduct amounts to an abuse.
13. The Commission notes that neither in the information nor during the preliminary conference has the Informant made any submission regarding the relevant market. The gravamen of the allegations is that OP is restricting competition amongst accreditation agencies and third party laboratories by mandating that the construction materials used by its contractors are to be tested only in a lab accredited by NABL. To support the contentions of the Informant, a copy of the guidelines issued



by OP regarding third party labs has also been enclosed with the Information. The guidelines enlist the categories of labs and certain other institutions that are eligible for testing of construction materials used in the projects of OP. They, *inter alia*, state that the purpose of the guidelines is to select reputed, independent and capable labs for the purpose of testing various construction materials like cement, coarse aggregate, fine aggregate, reinforcement steel, concrete cubes *etc.* The Commission notes that OP is neither engaged in the business of accrediting laboratories nor offers any service for testing construction materials. By stipulating that its contractors shall test the construction materials in selected third party laboratories, OP is indirectly consuming the services of such laboratories. Considering the allegations and the impugned conduct of OP, laboratory services for testing construction materials appear to be the focal services in the instant matter. From the consumption point of view, no other service would be substitutable with the testing of construction materials. Thus, the relevant product market in the instant case is the 'market for laboratory services for testing construction materials'. The Informant has not pointed out any difference in the conditions of competition, for the said services, in different regions in India. It appears that laboratory services for testing construction materials are largely standardised and therefore, uniform across India. Thus, the relevant geographic market is the whole of India. Accordingly, the relevant market in the instant case is the market for *laboratory services for testing construction materials in India.*

14. Coming to the assessment of dominant position, the Commission notes that although the Informant has alleged the impugned conduct as anticompetitive and contravention of the provisions of Section 4 of the Act, no fact or figure has been provided to demonstrate the purported dominance of OP in any relevant market. The OP is an indirect procurer



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in the relevant market. By no stretch of imagination, OP and its contractors can be considered as the lone consumers of laboratory services for testing of construction materials in India. The overall consumer base of testing laboratories in India is very wide and testing undertaken for OP by its contractors would be relatively marginal. Thus, the Commission is of the view that OP does not enjoy dominant position in the relevant market as a buyer. Accordingly, OP does not possess the ability, as a buyer, to influence the relevant market.

15. Notwithstanding the above, the Commission has also examined the impugned conduct of OP. Pursuant to the clarification sought by the Informant, OP, *vide* letter dated 31st July 2015, *inter alia*, replied that (i) NABL was the only accreditation agency in the earlier days and therefore, labs accredited by it were accepted; (ii) OP needs to ensure that its test reports are accepted by national and international customers and in view of the risk related to the accuracy, testing is carried out in third party laboratories; (iii) the guidelines for approval of third party laboratories were being reviewed as per prevailing circumstances to ensure best interests of OP and its customers at large; and (iv) in addition to the already accepted labs/institutions working with OP, third party laboratories accredited by any other accreditation agency which operates in accordance with the requirements of ISO/IEC-17011 having full membership & MRA of ILAC/APLAC are acceptable to OP.
16. Based on the reply dated 29th March 2016 of QCI, the Informant has claimed that it is not mandatory for an accreditation body to be a member of QCI or ILAC/ APLAC/ IAF to run accreditation programme in India. However, the Commission notes that the same letter also states that *'Many Government as well as International Organizations worldwide recognize international/ regional accreditation framework*



that exists under the umbrella of ILAC/APLAC'. Further, during the preliminary conference, OP pointed out that the lab recognition scheme of BIS provides that "The laboratory seeking recognition shall have accreditation to IS/ISO/IEC 17025 or ISO/IEC 17025 in the respective field of testing, such as Mechanical, Electrical, Chemical and Microbiological, as applicable. The accreditation body (through which the Accreditation is taken by the applicant lab) shall be a full member of Asia Pacific Laboratory Accreditation Co-operation (APLAC) and/or International Laboratory Accreditation Co-operation (ILAC)" [clause 1.5.1.1].

17. It may be noted that OP, being a public sector undertaking, has the responsibility to ensure that the civil works undertaken by its contractors adhere to the quality stipulations and facilitate the development of a robust power transmission infrastructure across India. It is evident that testing by third party laboratories is mandated by OP to instil confidence amongst national and international customers. The above discussed letter and scheme of QCI and BIS, respectively, also suggest that it is usual for many Government and International organisations to recognise the accreditation framework under the umbrella of ILAC and APLAC. Further, in addition to the labs accredited by NABL, the guidelines issued by OP also recognise Government Labs, Government College and Government Polytechnic, meeting the requirements prescribed therein. Seen in this background, the Commission does not find any unfairness or arbitrariness in the impugned conduct of OP.
18. The Commission further observes that every consumer/procurer must have freedom to exercise their choice freely in the procurement of goods and services. Such choice is sacrosanct in a market economy as the consumers are in the best position to evaluate what meets their



requirements and provides them competitive advantage in provision of their services. While exercising such choice, they may stipulate standards for procurement which meets their requirement and the same as such cannot be held as anti-competitive.

19. In view of the foregoing, the Commission is of the view that no case of contravention of the provisions of Section 4 of the Act is made out against OPs in the present case. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.
20. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

New Delhi
Date: 21/09/2016

Sd/-
(Justice G. P. Mittal)
Member