

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Competition Appeal (AT) No. 29 of 2022

IN THE MATTER OF:

Manish Sharma

...Appellant

Versus

Competition Commission of India & Anr.

...Respondents

Present:

For Appellant : Mr. Manish Tiwari and Mr. Shashi Bhushan, Advocates

**For Respondent : Ms. Srishti Vashisht, Advocate for CCI.
Mr. Sandeep Bisht, Advocate for R-2.**

J U D G M E N T

[Per.: Dr. Alok Srivastava, Member (Technical)]

07.08.2023: This present Appeal is filed under Sections 53 B (1) and (2) of the Competition Act, 2002 (in short “the Act”) against the order of the Competition Commission of India dated 31.12.2021. The Appellant is aggrieved by the impugned order in that the Competition Commission has erred by not appreciating that Respondent No.2 - Mediglobe Medical System (P) Ltd. was awarded contract by the Government of Chhattisgarh, despite it not fulfilling the basic requirements for award of the tender and the government officials have done so in a *malafide* manner.

2. The Appellant has stated that an investigation is already pending against the government officials involved in the process of

awarding of tender which fact was not taken into consideration by the Competition Commission while passing the Impugned Order. The Impugned Order (at pp 30 - 35 of the appeal paper book) under Section 26(2) of the Act has been passed after examining the information provided by the Appellant/Informant and found that no offence against the opposite party is made out under Section 3 or Section 4 of the Act. This has been stated in paragraph 12 of the impugned order:

“12. The Commission is of the view that the nature of allegations do not raise competition concerns under Section 4 of the Act. In the present matter, submission of bid by an alleged ineligible bidder cannot be said to be an instance of abuse of dominant position on the part of that bidder. Insofar as Section 3 of the Act is concerned, the Information is bereft of any reference to any agreement or understanding between the OP and any other party as envisaged under the Act, and, as such, provisions of Section 3 are also not attracted.”

3. Based on the above finding the Competition Commission has held that *prima-facie* no competition concern has been found in the information and it closed the information forthwith by the Impugned Order.

4. Upon hearing the Learned Counsel for Appellant in the matter, wherein he has submitted that his grouse is against the

State Government Officials who have awarded the tender without scrutinising the qualification of the Respondent No.2 vis-à-vis the requirements for award of the tender and thus Respondent No.2 has been wrongfully benefited, the bench put a query to the Learned Counsel for Appellant whether any infringement of Section 3 or Section 4 of the Act is made out, the Appellant was unable to give any clear and convincing reply. The Learned Counsel has clearly stated that the State Government is in a dominant position which it has abused in awarding the said tender to Respondent No.2 by relying on false information and forged documents

5. On looking at the facts of the case, the impugned order and the oral arguments submitted by the Appellant's Counsel, we are of the clear view that the information provided by the Appellant to the Competition Commission did not find truth in allegation regarding anti-competitive conduct of Respondent No.1 or Respondent No.2 in connection with Sections 3 and 4 of the Act. Therefore, we are of the view that the impugned order does not suffer from any infirmity.

6. We find that the Appellant has filed the Appeal to keep issue against Respondent No.2 alive even though he has not been able to make out any case against the Respondents under the Act.

Our view is further reinforced by the fact that the Government of Chhattisgarh had initiated action against the erring officials.

7. This appeal is, therefore, vexatious and unnecessary and it has consumed valuable judicial time of this Tribunal. We are therefore, inclined to impose a cost of Rs.50,000/- (Rupees Fifty Thousand Only) on the Appellant for indulging in an unnecessary and vexatious litigation. This cost shall be deposited in the Prime Minister's Relief Fund by the Appellant within 15 days of this order.

8. The Appeal fails as it is devoid of merit and is disposed of accordingly.

9. The file may be put up on 25.08.2023 for compliance of the above order regarding deposition of the amount of cost.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

pks/rr