



COMPETITION COMMISSION OF INDIA

Case No. 13 of 2023

In Re:

XYZ (Confidential)

...Informant

And

- 1. H.N.B. Garhwal University,
Srinagar, Dist. Garhwal, Uttarakhand – 246 174. ...Opposite Party No. 1**
- 2. Atal Bihari Vajpayee Vishwavidyalaya,
Opp Koni Police Station, Bilaspur - Ratanpur Road,
Koni, Bilaspur, Chattisgarh – 495 009. ...Opposite Party No. 2**
- 3. Indian Institute of Technology Ropar,
Rupnagar, Punjab – 140 001. ...Opposite Party No. 3**
- 4. Central University of Haryana,
Jant-Pali Mahendergarh, Haryana – 123 031. ...Opposite Party No. 4**
- 5. Central University of Punjab,
Bhatinda, Punjab – 151 401. ...Opposite Party No. 5**
- 6. Central University of Jharkhand,
Cheri - Manatu, Ranchi – 835 222. ...Opposite Party No. 6**
- 7. Bundelkhand University,
Jhansi, Uttar Pradesh – 284 128. ...Opposite Party No. 7**
- 8. Central University of Rajasthan,
Kishangarh, Rajasthan – 305 817. ...Opposite Party No. 8**
- 9. Utkal University,
Bhubaneswar, Odisha – 751 004. ...Opposite Party No. 9**



10. **Rajiv Gandhi University,** ...Opposite Party No. 10
Rono Hills, Itanagar, Arunachal Pradesh – 791 112.
11. **Madan Mohan Malaviya University of Technology,** ...Opposite Party No. 11
Gorakhpur, Uttar Pradesh – 273 016.
12. **Dr. Harisingh Gour Vishwavidyalaya,** ...Opposite Party No. 12
Sagar, Madhya Pradesh – 470 003.
13. **Acharya Narendra Deva University of Agriculture & Technology, Kumarganj, Ayodhya,** ...Opposite Party No. 13
Uttar Pradesh – 224 229.
14. **Nanaji Deshmukh Veterinary Science University,** ...Opposite Party No. 14
Jabalpur, Madhya Pradesh – 482 004.
15. **Institute of Advanced Study in Science and Technology,** ...Opposite Party No. 15
Vigyan Path, Garchuk, Guwahati, Assam – 781 035.
16. **Sardar Vallabhbhai Patel University of Agriculture & Technology, Modipuram, Meerut – 250 110.** ...Opposite Party No. 16
17. **Mahatma Gandhi Central University,** ...Opposite Party No. 17
Belisarai, Motihari, Bihar – 845 401.
18. **Dr. Shakuntala Misra National Rehabilitation University** ...Opposite Party No. 18
Lucknow, Mohan Road, Sarosa Bharosa,
Uttar Pradesh – 226 017.
19. **Indira Gandhi National Tribal University, Amarkantak,** ...Opposite Party No. 19
Lalpur, Anuppur, Madhya Pradesh – 484 887.
20. **Indian Institute of Management Bodh Gaya,** ...Opposite Party No. 20
Uravela, PrabandhVihar, Bodh Gaya – 824 234.



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- 21. Indian Institute of Technology Patna,
Bihta, Patna, Bihar – 801 106. ...Opposite Party No. 21**
- 22. Doon University,
Mothrowala Road, Kedarpur, Dehradun,
Uttarakhand – 248 001. ...Opposite Party No. 22**
- 23. National Institute of Technology, Rourkela,
Odisha – 769 008. ...Opposite Party No. 23**
- 24. Central University of Karnataka,
Kadaganchi, Kalaburagi, Karnataka – 585 367. ...Opposite Party No. 24**
- 25. Central University of Andhra Pradesh,
JNTU Road, Ananthapuramu – 515 002. ...Opposite Party No. 25**
- 26. Rajiv Gandhi Institute of Petroleum Technology,
Jais, Amethi – 229 304. ...Opposite Party No. 26**
- 27. Indian Institute of Technology Mandi,
Kamand, Himachal Pradesh – 175 005. ...Opposite Party No. 27**
- 28. CCS Haryana Agricultural University,
Hisar – 125 004. ...Opposite Party No. 28**
- 29. Babasaheb Bhimrao Ambedkar Bihar University, Muzaf-
farpur, Bihar – 842 001. ...Opposite Party No. 29**
- 30. IIM Sirmaur,
Paonta Sahib, Sirmaur, Himachal Pradesh – 173 025. ...Opposite Party No. 30**
- 31. National Human Rights Commission,
Manav Adhikar Bhawan, Block-C, GPO Complex, INA,
New Delhi – 110 023. ...Opposite Party No. 31**



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- 32. National Institute of Design, Assam,
Rajabari, Jorhat, Assam – 785 014. ...Opposite Party No. 32**
- 33. Kumaun University,
Sleepy Hollow, Nainital, Uttarakhand. – 263 001. ...Opposite Party No. 33**
- 34. University of Lucknow,
Lucknow, Uttar Pradesh – 226 007. ...Opposite Party No. 34**
- 35. Indian Institute of Technology (Indian School of Mines),
Dhanbad, Jharkhand – 826 004. ...Opposite Party No. 35**
- 36. Lok Sabha Secretariat,
Parliament Library Building, New Delhi – 110 001. ...Opposite Party No. 36**

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 XYZ (hereinafter, “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, ‘**Act**’) against aforementioned thirty-six (36) Opposite Parties, alleging contravention of the provisions of Section 3 and 4 of the Act.
2. As per the Informant, according to “Federation of Publishers’ & Booksellers’ Association in India” (‘FPBAI’), there are ~4000 booksellers, publishers and



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subscription agents, registered across the country. A large number of enterprises are books suppliers who supply books to libraries of university, NITs, IITs and other higher education institutions. It is stated that generally these suppliers exhibit books or circulate catalogues to the faculties of these institutions and thereafter books are supplied to libraries.

3. It is also stated that books are supplied in accordance with recommendation or supply order placed. It is averred that there are no special or specified conditions to enter into this business. The necessary qualifications to become a supplier include having a Permanent Account Number (PAN), filing an Income Tax Returns (ITR) and prior experience in supplying books to any library.
4. It is alleged that some institutions, university administration (Vice-Chancellor and Directors) and the channels to acquire, manage and provide books to users (teaching faculty, students, and research scholars) have imposed certain restrictive conditions in procurement of books such as – charging earnest money deposit (EMD), security deposit, minimum annual turnover, annual renewal fees, processing fees for expression of interest, performance security, bank guarantee, documentary proof for Goods and Service Tax (GST), profit & loss account, balance sheets, mandatory license of import/export code *etc.* It is further alleged that an application for empanelment for supply of books was denied/rejected owing to non-fulfilment of some conditions such as the absence of an exemption under the category of Micro and Small Enterprises (under MSMED Act, 2006) and use of criteria of presumptive income (u/s 44AD of Income Tax Act, 1961). According to Informant, the above-said conditions have swept out suppliers in great numbers by favouring few select ones and have the effect of ousting all other small & mid-size books suppliers. Resultantly, the same has the effect of narrowing the option of choosing relevant books for faculty, students, and research scholars thereby, causing an appreciable adverse effect on competition (AAEC) in the market for supply of books.
5. Apart from above, it is also alleged that invitation of tender is neither applicable nor justified for the procurement of books. Relying on the list of empanelled suppliers for



supply of books from the following institutions, the Informant has averred that: University of Delhi has about 118 (one hundred and eighteen) suppliers; Jamia Millia Islamia has about 93 (ninety-three) suppliers; Rajiv Gandhi University, Itanagar, has 4 (four) suppliers; both Central University of Jharkhand; and H.N.B. Garhwal University have 7 (seven) suppliers each. According to Informant, such restrictive conditions / clauses in the tender documents, mentioned *supra*, are making this market an oligopoly or even monopoly which is otherwise an ideal market for perfect competition.

6. Lastly, the Informant has stated that FPBAI had raised this issue before Vice-Chancellors of several Universities. While some universities have relaxed these conditions, many have not changed. Furthermore, some universities have invited tenders by publishing advertisement only on one platform *i.e.*, www.etender.up.nic.in instead of advertising on the central public procurement portal ('CPP') *i.e.*, at www.eprocure.gov.in; on Government e-Marketplace ('GeM') and/or on their own website, which results in affecting the competition in the marketplace by benefitting few suppliers only.
7. Thus, the Informant has prayed:
 - a) To conduct an investigation to find out all culprits of this economic offence and impose a heavy penalty on every guilty enterprise;
 - b) To direct concerned authority to stop the universities from posting advertisements on a single platform;
 - c) To take suitable action as deemed fit against firms to restrain them from indulging in anti-competitive activities;
8. On perusal of the Information, the Commission observes that essentially the gravamen of the Informant emanates from certain alleged restrictive terms and conditions in the tenders floated by OPs for procurement of books for their libraries. In this regard, the Commission observes that the Informant, apart from making just a passing reference to violation of the provisions of Section 3 of the Act, has not mentioned any specific conduct of the OPs which can be examined under the provisions of Section 3 of the Act.



9. Similarly, although the Informant has levelled allegation under Section 4 of the Act against OPs but has not defined any relevant market or established dominance of any of the OPs. In this regard, the Commission observes that considering the facts, circumstances, allegations and for the reasons detailed in the succeeding paras, it is not necessary to delineate relevant market and to assess dominance of OP(s) therein.
10. The Commission notes on the basis of Information available in public domain that there are numerous institutional buyers regularly procuring books for libraries apart from the OPs. In addition, several organisational buyers such as Government departments, judicial bodies, public libraries, public sector undertakings, professional bodies, private institutions *etc.*, also procure books. In such a structure of the market, the Informant can supply books to a number of other institutions / organisations and thus does not seem to be dependent on any of the OPs for survival of its business.
11. In relation to allegations pertaining to the stipulation of certain requirements such as EMD, work experience, bank guarantees *etc.* in the tenders floated by procurer(s), the Commission has consistently affirmed through its earlier decisions that a procurer acting as a consumer has the right to make decisions that serve its best interests and can employ its preferences to optimize the benefits gained from consuming a product or service. As a consumer, a procurer is entitled to mention specific technical criteria, conditions, or provisions within the tender documentation in accordance with its particular needs. It's important to recognize that the entity initiating the tender process holds the status of a consumer and retains the right to prescribe suitable qualifying prerequisites based on its specific requirements. The Commission observes that in a market economy, a consumer must be allowed to exercise its choice freely while purchasing goods and services in the market. It is expected that a consumer can decide what is the best for it and will exercise its choice in a manner which would maximise its utility that is derived from the consumption of a good/ service.



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12. Specifically, the Commission, in *Mr. Dushyant v. National Accreditation Board for Testing and Calibration Laboratories (NABL) & Ors.* dated 24.02.2022 observed as under:

“...the Commission notes that every consumer/ procurer must have the freedom to exercise its choice freely in the procurement of goods/services and such a choice is sacrosanct in a market economy. While exercising their choice, OPs are free to stipulate standards for procurement, and the same cannot be held to be out-rightly anti-competitive and will depend, inter alia, on factors such as the nature of the procurement, the size of procurer, the goods / services sought to be procured by it, and whether such buying will result in foreclosure for other sellers operating in the market who are competing to sell and are substantially dependent on such buying process. Further, the autonomy to specify the requirements of procurement is inherent in the procurers. When the procurer is a dominant buyer in its sphere of economic activity and its unilateral conduct in the buying process can tend to distort competition on the supply side of such market, then there is reason to be circumspect...”

13. Having thus considered the Information and the material available on record, the Commission is of the view that, *prima facie*, no case of contravention of provisions of Section 3 or 4 of the Act is made out and accordingly, the Information filed against OPs is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
14. Before parting with the order, the Commission deems it appropriate to deal with the request of the Informant seeking confidentiality. From the perusal of the Information, it is observed that the Informant has mentioned in the Information that it is seeking confidential treatment over its identity and also other Information mentioned therein. However, it is noted from the public version of the Information filed with the Commission that apart from the confidential treatment over its identity, confidentiality



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has not been sought on any other Information/material. Accordingly, the Commission grants confidentiality over identity of Informant in terms of Regulation 35 of the General Regulations, 2009, read with Section 57 of the Act for a period of three years from the passing of this order.

15. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 18/08/2023

New Delhi