



COMPETITION COMMISSION OF INDIA

Case No. 25 of 2024

In Re:

XYZ (Confidential)

Informant

And

Navodaya Vidyalaya Samiti
B-15, Institutional Area,
Sector 62, Noida, Uttar Pradesh – 201307.

Opposite Party No. 1

RailTel Corporation of India Ltd.
Plate – A, 6th Floor, Office Tower – 2,
NBCC Building, East Kidwai Nagar,
New Delhi - 110023

Opposite Party No. 2

CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

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

1. The present Information has been filed by XYZ (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) before the Competition Commission of India (“**CCI**”/ “**Commission**”), alleging contravention of the provisions of Section 3 and 4 of the Act by Navodaya Vidyalaya Samiti (“**Opposite Party No. 1**”/ “**OP-1**”/ “**NVS**”)



and RailTel Corporation of India Ltd. (“**Opposite Party No. 2**”/ “**OP-2**”/ “**RailTel**”) (collectively referred to as “**OPs**”/ “**Opposite Parties**”).

2. The Informant has sought confidentiality over its identity as per Section 57 read with Regulation 35 of the Competition Commission of India (General) Regulations, 2009.
3. As per the Informant, OP-1 is an autonomous body under the Ministry of Education engaged in furthering the objectives of the Prime Minister Schools for Rising India (“**PM SHRI**”) scheme (“**the Scheme**”) through establishment of Jawahar Navodaya Vidyalaya (“**JNV**”) schools across India. As stated, OP-2 is a Mini-Ratna Category-I Public Sector Undertaking (“**PSU**”) engaged in the business of providing telecom infrastructures.
4. The Informant has stated that, OP-2 obtained a Work Order dated 24.01.2024 from OP-1 for ‘*Supply & Implementation of Integrated Infrastructure & IT solutions under PM SHRI Scheme in JNVs Schools*’ for an amount of Rs. 162.73/- crores (Rupees One Hundred Sixty Two Crores and Seventy Three Lakhs Only). Thereafter, OP-2 floated Tender No. RailTel/RFP/COMKTG/EB/IT/NVS/PMC/2023-24 dated 01.12.2023 namely Request for Proposal (“**RFP**”) for Selection of partner for supply & implementation of Integrated Infrastructure & IT solutions at multiple locations pursuant to the above-mentioned Work Order. The Informant has alleged that this RFP was designed to oust a majority of bidders by way of having stringent and arbitrary technical specifications that did not correspond to industry standards and resulting in a tacit agreement between the Opposite Parties, thereby violating the provisions of Section 3 of the Act.
5. It is alleged that both OP-1 and OP-2 have abused their dominant position in the market by acting in an opaque and arbitrary manner. As per the Informant, the selection of OP-2 by OP-1 was not done through a fair and transparent process. Instead, without any due reason assigned for the same, the Work Order was given to OP-2, despite it having no prior expertise or any relation with the PM SHRI Scheme. This is also stated to be



evidenced by the fact that, as per the description provided on the official website of OP-2, it is mainly engaged in the business of modernizing the existing telecom system for train control, operation and safety, creation of nationwide broadband and multimedia network and laying optical fiber cable using the right way along railway tracks.

6. As per the Information, OP-1 without any due procedure and consideration of relevancy, appointed OP-2 as the Project Management Consultant (“**PMC**”) for implementation of the work of *Supply & Implementation of Integrated Infrastructure & IT solutions under PM SHRI Scheme in JNVs Schools*. OP-1 has not provided any reasonable justifications as to why OP-2 was selected to carry out the said Work Order. This has been stated to be in violation of the provisions of Section 4(2)(b)(i) of the Act.
7. The Informant has alleged that OP-2 has abused its dominance by publishing the RFP with certain technical specifications resulting into disqualification of potential bidders from participation in the bidding process. OP-2 proceeded with the bidding process in an opaque and secretive manner whereby no details have been provided about the bidding. Following issues have been highlighted by the Informant, with respect to the terms provided in the RFP issued by OP-2:
 - (i) OP-2 has clubbed different products into one single tender *i.e.*, the RFP, with no regard for the fact that supplies of different products require different technical specifications and expertise, thereby making it improbable for any bidder to carry out the Work Order in the form released by OP-1.
 - (ii) OP-2 is stated to have provided brief and vague specifications for certain services in the RFP, namely – construction of additional classrooms and art & craft rooms *etc.* The price of each service varies according to the nature of the work and the same cannot be estimated *ex-ante* without proper specifications and parameters as was required to be set by OP-2 in its RFP.
 - (iii) Prequalification criteria appears to be heavily biased towards IT and ICT companies, excluding companies with expertise in construction and other relevant areas, which effectively narrows the pool of eligible bidders to those with specific affiliations or capabilities aligned with the interests of OP-2.



- (iv) A lackadaisical approach has been taken with regard to the RFP, whereby important information pertaining to the work has been omitted which reeks of *malafide* and indicate a general ignorance for the sanctity of the procedure of public procurement that is supposed to be fair, transparent and non-arbitrary.
- (v) OP-2, in the RFP, has not disclosed the locations where the work is to be carried out due to which certain factors such as regulatory barriers and local specification requirements cannot be determined. Due to the arcane nature of the locations where the works are to be carried out under the RFP, it is necessary to take into account the local factors such as language, demographics *etc.*, to implement the PM SHRI scheme in the most efficient manner, which has been minimized by OP-2 by disallowing fair bidding.
- (vi) Corrigendum 1 to the RFP dated 15.12.2023 introduced restrictive bid qualifications, including a minimum qualifying turnover of over 450 crores and mandatory Capability Maturity Model Integration (“CMMI”) Certificate which is not justified by the Scope of Work and served to exclude many potential bidders who could otherwise fulfill the contract efficiently.
- (vii) The agreement and bidding process have contravened the Public Procurement Policy for Micro and Small Enterprises (“MSEs”) Order, 2012, as amended in 2022, by not ensuring fair and equal opportunity for MSEs. This exclusion of MSEs from the bidding process violates the principles set forth in the MSME order, which mandates a minimum 25% procurement from MSEs.
- (viii) RFP lacked a provision for a pre-bid meeting which is crucial for clarifying doubts and ensuring a comprehensive project understanding. It is also stated that the RFP was categorized under “Service Category” on RailTel’s website significantly hindering its visibility to potential bidders. As per the Informant, it should have been under “Works and Supply” category for wider reach and transparency.

8. The Informant has stated that both the Opposite Parties fall within the definition of enterprise citing Section 2(h) of the Act. The Informant, based on several factors under Section 19(7) of the Act, has defined the relevant product market as “*ATL Cum Skill Lab, Composting Facility for Kitchen & Garden Waste, Construction of additional*”



classroom, Construction of art & craft rooms, Establishment of Maths Lab, Rainwater Harvesting, Solar Plant with backup, Integrated Solar streetlight (Without Pole), Integrated Solar streetlight (With Pole), Establishment of Language Lab, Colorful dustbin, Establishment of digital library, Panel based smart classroom, Android based Tablet/Notebook, Digital Signage with videos in Citizenship skills, Constitutional Values, Knowledge of India and 21st Century learning and Information Skills, and Refurbishment of existing Chemistry Lab”. The Informant defined the geographical market as the whole of India, where the PM SHRI scheme is applicable.

9. It is also stated that the bidders are required to comply with Public Procurement (Preference to Make in India) Order, 2017 and its subsequent amendments thereof, promulgated by the Department for Promotion of Industry and International Trade. As per the Informant, despite numerous attempts by potential bidders to raise concerns through personal communication and formal letters, the concerned queries were disregarded by both NVS and RailTel officials. RailTel responded to queries with an unsigned letter on plain paper refuting all the concerns of the Informant.
10. In view of the facts and circumstances mentioned above, the Informant has requested the Commission to grant the following reliefs:
 - a) declare the conduct of OPs in contravention of Section 4 of the Act;
 - b) order OPs to cease and desist from the anti-competitive conduct;
 - c) impose appropriate penalty on the OPs; and
 - d) pass any other such order the Commission may deem fit to ensure free and fair competition.
11. The Informant also sought interim relief under Section 33 of the Act, by way of an injunction preventing OP-2 from further carrying out the bidding process under the current terms of the RFP pending final adjudication. The Informant also requested the Commission to pass any other order that it deemed fit to ensure free and fair competition.



12. The Commission considered the Information in the ordinary meeting held on 15.01.2025 and decided to pass an appropriate order.
13. Going by the content of Information, the Commission observes that the Informant primarily appears to be aggrieved by the alleged abuse of dominant position by OP-1 in appointing OP-2 as the PMC for implementation of the PM SHRI scheme in JNVs across India without providing any reasonable justifications as to why OP-2 was selected to carry out the Work Order dated 24.01.2024. The Informant also appears to be aggrieved, *inter alia*, by alleged abuse of dominant position by OP-2 in releasing an RFP which restricted entry of entities in the bidding process and also outlined a very broad scope of work that is not capable of being carried out by any one entity in its entirety. In addition to the allegations under Section 4 of the Act, the Informant has alleged violation of the provisions of Section 3 of the Act.
14. With regard to the violation of Section 3 of the Act, the Commission notes that it prohibits anti-competitive agreements which include but are not limited to cartel and bid-rigging. The Commission notes that the Informant has alleged tacit agreement between OP-1 and OP-2 in awarding tender, however, it has not provided any evidence or material which could indicate bid rigging in violation of Section 3 of the Act. Accordingly, the Commission deems it appropriate not to proceed further on the basis of such unsubstantiated allegations.
15. As far as allegations under Section 4 is concerned, the Informant has alleged that OP-1 awarded the Work Order to OP-2, despite it having no prior experience or relation whatsoever with the PM SHRI Scheme and abused its dominant position under Section 4 of the Act. Further OP-2 abused its dominant position by issuing an RFP which is faulty, restrictive and defective. The Commission is of the view that the alleged conduct of OP-1 in appointing OP-2 as PMC and further issuance of faulty RFP by OP-2 themselves are not amenable under the province of Section 4 of the Act without any supporting evidence. Simply selection or non-selection of an agency as PMC or issuance or non-issuance of RFP or issuance of defective RFP by an entity cannot be



said to be abusive in terms of Section 4 of the Act unless and until there are availability of ingredients of the same as required under the Act. As stated, these issues lie within the precinct of the freedom of the procurer.

16. The Commission in its various orders have opined that the procurer, which can also be considered a consumer of a tendering process, is at liberty to set its terms and conditions for procurement, based on its requirements. 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 *ipso facto* cannot be held as anti-competitive. Accordingly, the Commission, based on the facts and circumstances and analysis carried out *supra*, does not find it appropriate to examine the conduct of OP-1 and OP-2. Accordingly, the Commission has refrained from delineating relevant market and assessment of dominance, as required under the provisions of the Section 4 of the Act.

17. In the facts and circumstances of the present case and analysis carried out hereinabove, the Commission is of the view that no *prima facie* case of contravention of either Section 3 or Section 4 of the Act is made out in the present matter against OP-1 and OP-2. Accordingly, the Information is ordered to be closed forthwith in terms of the provisions contained in 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.

18. Before parting with the order, the Commission notes that the Informant has prayed for grant of confidentiality over its identity including name and contact details. Accordingly, in terms of Regulation 36(1) of the Competition Commission of India (General) Regulations, 2024, the Commission decides to keep the identity of the Informant including name and contact details confidential for a period of three years from the date of passing of this order.



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

**Sd/-
(Ravneet Kaur)
Chairperson**

**Sd/-
(Anil Agrawal)
Member**

**Sd/-
(Sweta Kakkad)
Member**

**Sd/-
(Deepak Anurag)
Member**

**Date: 03/03/2025
New Delhi**