



COMPETITION COMMISSION OF INDIA

Case No. 1 of 2016

In Re:

Shri Anand Parkash Agarwal

Informant

And

Dakshin Haryana Bijli Vitran Nigam

Opposite party No. 1

Haryana Electricity Regulatory Commission

Opposite party No. 2

State of Haryana

Opposite party No. 3

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member



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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the ‘Act’) by Shri Anand Parkash Agarwal (hereinafter referred to as the ‘Informant’) against Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as ‘OP-1’), Haryana Electricity Regulatory Commission (hereinafter referred to as ‘OP-2’) and State of Haryana (hereinafter referred to as ‘OP-3’), *inter-alia*, alleging contravention of the provisions of Section 4 of the Act.
2. The Informant is a resident of Gurgaon and a domestic consumer of electricity supplied by OP-1.
3. OP-1 is stated to be an electricity distribution company owned by OP-3 and is licensed by OP-2 to exclusively supply electricity in nine (9) districts of the State of Haryana. OP-1 purchases power from approved sources of electricity that are in the business of generation of power and supplies the same to different categories of consumer such as domestic, agricultural, industrial and commercial.
4. OP-2 is the Haryana Electricity Regulatory Commission, stated to be a statutory body corporate designated to function as an autonomous authority responsible for regulation of power sector within the State of Haryana. It grants license to electricity suppliers and is also empowered under the Electricity Act, 2003 to establish State Advisory Council for the purpose of advising OP-2 on protection of consumer interest.



5. OP-3 is the State of Haryana. OP-3 is stated to own and control OP-1. As per the website of the Department of Power, Haryana, the power sector of the State comprises of four wholly State-owned corporations viz. Haryana Power Generation Corporation Limited, Haryana Vidyut Prasaran Nigam, Uttar Haryana Bijli Vitran Nigam and Dakshin Haryana Bijli Vitran Nigam, which after unbundling of the Haryana State Electricity Board in 1998, are responsible for power generation, transmission, distribution and trading in the State. These utilities and OP-2 work under the administrative control of the Department of Power.
6. The primary concern of the Informant relates to the purported unfair and discriminatory price charged by OP-1, in the form of Fuel Cost Surcharge Adjustment ('FSA'). It has been stated that any fuel price variations incurred on the input costs, in the supply chain of electricity, are passed on to the customers under the price head called FSA.
7. The Informant has averred that OP-1 is the sole supplier of electricity in the area of his residence and it charges tariff as approved by OP-2. Along with the tariff, OP-1 is stated to charge FSA as one of the components of the price of electricity supplied.
8. It has been, *inter alia*, alleged that OP-1 has been steadily increasing the FSA post 2008 even when the fuel costs have been steadily declining during the same period. Further, FSA charged by OP-1 has been more than the mandated ceiling prescribed under the Regulations framed by OP-2 for such purpose. It has also been alleged that OP-1 has been imposing differential FSA based on the quantity of power consumed and thereby, besides discriminating between the consumers, it has also been cross-subsidizing the uncontrollable pass through costs as well as



operating in an extremely uncompetitive and inefficient manner. These conducts of OP-1 have been alleged as abuse of dominant position by OP-1, in contravention of the provisions of Section 4 of the Act.

9. The Commission has given a careful consideration to the information and other materials available on record.
10. 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. The purpose of delineating the market is to ascertain whether the OP enjoys a position of strength required to operate independent 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 abuse.
11. It is observed that the Informant is a resident of Gurgaon and is a domestic consumer of electricity supplied by OP-1. The Commission notes that for the purpose of domestic/household use, no other product could be considered as a substitute to electricity. Accordingly, the relevant product market in the instant case appears to be *distribution of electricity*. As regards the relevant geographic market, the Commission notes that the Informant resides in the area where OP-1 alone is licensed to distribute electricity and there are regulatory restrictions for any other player to operate in the areas licensed to OP-1. Accordingly, the relevant geographic market appears to be *the licenced area of OP-1 in the State of Haryana*. Thus, the relevant market in the instant case is the *market for distribution of electricity in the licensed area of OP-1 in the State of Haryana*.



12. It is observed that OP-1 has been authorised to be the exclusive supplier of electricity in the areas licensed to it. Therefore, no other choice is available to domestic consumers in the licensed area. Hence, OP-1 appears to enjoy dominant position in the relevant market in view of the exclusive license granted to it and the presence of regulatory restrictions for any other player to enter into the relevant market. However, it is relevant to keep in mind that the relevant market is a regulated one and the degree of commercial freedom enjoyed by OP-1 may be subject to limitation in matters such as tariff, area of distribution, *etc.* Further, OP-1 being a State owned entity may have social obligations and does not function on profit motive alone.
13. Before examining the alleged abuse, it is relevant to note that FSA charges are computed and levied by the Electricity Distribution Companies as per the Regulations issued by the concerned State Electricity Regulatory Commission. Although the Informant has claimed that the fuel prices have declined since 2008 but the rate of FSA levied by OP-1 has been increasing disproportionately, no fact or figure has been provided to substantiate the purported decline in the price of fuel used for power generation leading to a decline in the cost of power generation. In the absence of any cogent material supporting these claims, it would be difficult to construe any unfairness regarding the quantum of FSA levied.
14. As regards the issue of discriminatory pricing, it is observed that OP-1 has classified its domestic consumers into three categories *viz.* (i) total consumption upto 100 units; (ii) total consumption more than 100 units



and upto 500 units; and (iii) total consumption more than 500 units. From the circulars issued by OP-1, as enclosed with the information, it is evident that separate FSA has been prescribed for each of the category mentioned above. Further, different and higher FSA is recovered from non-domestic consumers. It appears that the classification of consumers and corresponding FSA charged by OP-1 follow a rationale whereby domestic consumers are charged less than non-domestic consumers. Different FSA seems to have been envisaged for different categories of consumers depending upon the socio-economic conditions of the respective class of consumers. Thus, the classification appears to have economic justification based on market segmentation and does not amount to discriminatory conduct.

15. The issue highlighted by the Informant in the present case essentially relates to the functions discharged by the Electricity Distribution Company and the State Electricity Regulatory Commission in respect of fixation of FSA; and no competition issue is discernible from the facts presented in the information. Further, as noted earlier, OP-1 computes and levies FSA as per the Regulations framed by OP-2. Any issue regarding non-compliance of the Regulations would be thus, dealt with by OP-2. Any person aggrieved by the decision of a State Electricity Regulatory Commission could also appeal such decision before the Appellate Authority under the Electricity Act, 2003.
16. 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.



17. 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

(U. C. Nahta)
Member

New Delhi
Date: 10/02/2016

Sd/-
(M. S. Sahoo)
Member