



Competition Appellate Tribunal



Ministry of Corporate Affairs
Govt. of India

Kota House Annexe
1, Shahjahan Road
New Delhi – 110011
Dated : 04-02-2014

To

✓ Accreditation Commission for conformity
AssesmentBodies Private Limited.
Suite # 114, Level 1, Master Mind-IV
Royal Palms, Aarey Colony, Goregaon (East).
Mumbai- 400 065,India

Appellant

Vs

1. Quality Counsel of India/ constitution Board
National Accreditation Board for Certification
Institution of Engineers Building IIInd Floor,
2- Bahadur Shah Zafar Marg,
New Delhi-110002.
2. National Accreditation Board for Testing & Cabiration
3rd Floor, NISCAIR 14,Satsang
Vihar, New Mehrauli Road.
New delhi – 110016.
3. The Additional Secretary (Trade Policy Division),
Ministry of Commerce & Industry,
Udyog Bhawan, Raffi Marg,
New Delhi-110 107.
4. The Secretary,
Department of Industrial Planning &Policy(DIPP)
Ministry of Commerce & Industry,
Lodhi Estate, New Delhi-110 107.
5. The Secretary,
Department of Science & Technology,
Technology Bhavan,
New Merauli Road,
New Delhi- 110016.
6. The Secretary,
Ministry of Micro, Small and Midium Enterprises,
Udyog Bhavan, Raffi Marg,
New Delhi-110011.
7. The Secretary,
Ministry of Food Processing Industries,
Panchsheel Bhavan,
August Kranti Marg,
New Delhi – 110049.
8. The Secretary,
Ministry of Railway, Govt. of India,
Rail Bhawan, Raffi Marg,
New Delhi- 110001.
9. Chief Executive Officer,
Food & Safety Standards Authority of India
FDA Bhawan, Next to Rashtriya Bal Bhawan
Kotla Road , New Delhi-110001.
10. The Secretary,
Ministry of Environment& Forest,
Paryavaran Bhawan, CGO Complex,,
Lodhi Road, New Delhi - 110003
11. The Secretary,
Ministry of Petroleum & Natural Gas
Shastri Bhawan,
New Delhi-110001
12. Ministry of Road Transport&Highways,
Transport Bhavan, Parliament Street,
New Delhi-110001.
13. The Secretary,
Department of Consumer Affairs,
Ministry of Consumer Affairs,Food & Public
Distribution,
Krishi Bhawan,Dr. Rajender Prasad Road
New Delhi- 110001.



14. The Secretary,
Ministry of Health & Family Welfare,
Moulana Azad Road, Nirman Bhawan,
New Delhi – 110008.

15. The Secretary,
Competition Commission of India,
Hindustan Times House,
18-20, Kasturba Gandhi Marg
Delhi-110001

Respondents

Sub. : *Appeal No. 03/2013* .

Sir/Madam,

I am directed to forward herewith a copy of order dated 17.01.2014 passed by the Hon'ble Tribunal on the above subject for your information .

Yours faithfully,

her 
4/2/14
Court Master

COMPETITION APPELLATE TRIBUNAL

Appeal No.03/2013

(Under Section 53B of the Competition Act, 2002 against the order dated 7.11.2012 passed by the Competition Commission of India in Case No.51/2012.)

CORAM

Hon'ble Justice V. S. Sirpurkar
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Smt. Pravin Tripathi
Member

In the matter of :

Accreditation Commission for Conformity Assessment ... Appellant
Body Pvt. Ltd.

Versus

Quality Council of India and Ors. ... Respondents

Appearances : Shri M.M. Sharma, Ms. Deepika Rajpal and Shri Vaibhav Chouskse, Advocates for the Appellant

Shri Sumit Babbar (R9), Shri R.M. Sharma (R11) and Ms. Sandhya Kohli, Advocates for the Respondents

Shri Mayank Bansal, Advocate with Dr. Shabistan Aquil, DD(Law, CCI) for the CCI



ORDER

17th January 2014

1. This is an appeal against the order passed by the Competition Commission of India u/s 26(2) of the Competition Act (in short Act) closing the information laid before it by the present appellant.
2. We have heard Shri M.M.Sharma for the appellant as well as Shri Mayank Bansal, Shri Sumit Babbar, Shri R.M. Sharma and Ms. Sandhya Kohli for the respondents. It was informed by the informant that it was a private limited

company incorporated to engage in the business of accreditation of certification bodies, inspection bodies, testing & calibration laboratories, medical laboratories, diagnostic centres & blood banks, etc. operating in India. The informant joined as many as 14 respondents to its information. They are:

1. Quality Counsel of India/National Accreditation Board for Certification Bodies
2. National Accreditation Board for Testing and Calibration Laboratories,
3. Secretary, Ministry of Commerce and Industry
4. Secretary, Department of Industrial Planning and Policy
5. Secretary, Department of Science and Technology
6. Secretary, Ministry of Micro, Small and Medium Enterprises
7. Secretary, Ministry of Food Processing Industries
8. Secretary, Ministry of Railways
9. CEO, Food Safety and Standards Authority of India
10. Secretary, Ministry of Environment and Forest
11. Secretary, Ministry of Petroleum and Natural Gas
12. Secretary, Ministry of Health and Family Welfare

3. Out of them, the main ire of the informant was against Quality Council of India/National Accreditation Board for Certification Bodies (NABCB hereinafter) as also against the OP No.2, National Accreditation Board for Testing and Calibration Laboratories (NABTCL hereinafter). The respondent Nos. 3, 4, 5, 6, 7 and 8 appear to be the Secretaries of various Ministries while respondent No.9 is a CEO, Food Safety and Standards Authority of India. Again, rest of the respondents appear to be the Secretaries of various Departments. It was submitted in the information that OP1 and OP2 were autonomous bodies under



the aegis of Department of Science and Technology, established to provide the government, regulators and the industries with the scheme of laboratory accreditation through third party assessment for formally recognising the technical competence of laboratories in accordance with the International Organization for Standardization (ISO). It was then stated in the information that OP1 and OP2 were against the business of accreditation and conformity assessment in India. The informant went on to suggest that accreditation was a process by which certification of companies' competency, authority or credibility is presented to the various certification bodies (CBs hereinafter). The informant further went on to suggest that OP1 was falsely claiming that it was carrying out the business under the aegis of International Accreditation Forum (IAF), an association incorporated in USA. It was also made out that IAF did not allow more than one accreditation body offering some scope of accreditation from each country. It was suggested that because of this scheme, the competition was hindered. It was then alleged that OP1 falsely claimed that membership of IAF was a mandatory requirement for the service to be recognized globally and non-members of the IAF lacked credibility as accreditation/conformity assessment service provider. The informant also alleged that in so far as the OP1 was concerned, it was a dominant player in the accreditation market and that the various government agencies and departments were treating OP1 and OP2 as the sole and exclusive accreditation service providers. It was alleged that there was a practice of incorporating a condition of OP1's and OP2's accreditation in various government notifications/circulars/directions and thus such stance on the part of the government departments was proving as an entry barrier to the concerns like the informant. It was alleged that OP1 has been spreading



malicious and misleading propaganda against the operations of the informant against which it raised concerns with OP1 but the OP1 did not respond.

4. As regards OP2, it was suggested that it provided third party voluntary accreditation service to testing and calibration laboratories according to the international standards. It was further suggested that most government notifications for voluntary accreditation, prescribed accreditation only by OP2. Under the Food Safety and Standards Act, 2005 only those laboratories/institutes were notified for analysis of samples which were accredited by OP2. It was alleged that there was no competition to OP2 at all. It was alleged that OP1 and OP2 had entered into an agreement and understanding with the government agencies influencing the government agencies to issue orders/circulars etc. recommending only OP2 as the sole and exclusive accreditation service provider and by this, the dominance of OP1 and OP2 was maintained and thus, it did not allow any other competitor to enter the market and this was in contravention of provisions of the Act, more particularly, Section 4 of the Act. The informant alleged the contravention of Section 4(1)(a), 4(2)(b)(ii) and 4(2)(c) of the Act on the part of the OP1 and OP2. It also complained of the OP1 and OP2 operating under the umbrella of OP3 and OP4 and also influencing other OPs thus contravening Section 3(1) and (3)(3) of the Act.

5. It will be at this stage interesting to consider the prayers made by the informant before the CCI –

“1. That by a permanent order and direction of the Hon'ble Commission to all Respondents to accord recognition of accreditation services provided by the Complainant along with and



on par with the Respondent No.1 and 2 in their official communication/s and publication/s for the purposes of various recognition, benefits, incentives, subsidies, purchases, contract, procurements, tendering, expression of interests, bidding documents and schemes and national and international forums/representations.

2. That by a permanent order and directions of the Hon'ble Commission to all Respondents and various departments (central & state) to create a level playing field for the Complainant viz-a-viz the Respondents 1 & 2.

3. That by a permanent order and direction of the Hon'ble Commission to all Respondents and various Government departments to use correct normative references such as ISO 17021 or ISO 17020, ISO 17025, ISO 15189 Accreditation instead of 'NABCB/NABL Accreditation'.

4. That by a permanent order and direction of the Hon'ble Commission to all Respondents and various Government department be called upon to issue amendments/corrigendum in their relevant notifications/orders/instructions/circulars/memos whereby the Respondent Nos.1 & 2 and the Complainant are designated/nominated as equivalent in terms of relevant accreditation services. And therefore, the services rendered by Respondents No.1 & 2 are not exclusive in the relevant market.



5. That by a permanent order and direction of the Hon'ble Commission to all Respondents to refrain from taking any such actions or steps which could in any way undermine, limit or restrict the Complainant in the relevant market that could be violative of the provisions of the Competition Act of India.

6. That by an order and direction of the Hon'ble Commission the Respondents No.1 & 2 be penalized as per the provisions of the Competition Act of India for abuse of dominant position and anti competitive agreements/arrangements.

7. That by an order and direction of the Hon'ble Commission the Respondents No.1 & 2 be called upon to provide adequate monetary compensation to the Complainant for preventing and denying the Complainant the access to the relevant market that has resulted in loss of pecuniary nature to the Complainant.

8. Pass such other and further order as the Hon'ble Commission may deem fit and proper in the circumstances."



6. We have deliberately quoted the prayers as at least, prima facie, we are of the opinion that none of the prayers could have been granted by the CCI. The CCI noted that the grievance of the informant was that the government agencies were not considering it as an accreditation service provider and were only promoting OP1 and OP2 which were like any other private organization. And this

way, the OP1 and OP2 proved to be entry barrier for any other competing party to enter the market.

7. It is an admitted position that the informant entered the market in September 2010. The CCI has also referred in its order to the correspondence between IAF.

8. After hearing the informant in details, the CCI came to a conclusion and found that there were number of certification bodies doing the accreditation business in this country. Shri Sharma for the appellant very seriously objected to this statement contained in para-12 and pointed out that though the certification bodies were more than about 137 in India, accreditation bodies were only 3 at least in India.

9. From the information furnished by the informant, the CCI held the relevant market to be the market of service of accreditation certification to the companies who satisfy certain minimum standard known internationally. It was noted that accreditation is granted in each field and different standards are there for each field internationally. The CCI held the geographic market in this case to be India. After considering the overall scenario of the facts, the CCI came to the conclusion that there was no material available or made available by the informant that the OP1 and OP2 were or are the dominant players in the market as suggested above. It is obvious that these two opponents could not be held as the dominant players as the accreditation business is international and there are several international bodies operating in India which are also doing the accreditation of the certificate bodies. We do not see anything wrong with this



finding of the CCI. We have heard Ms. Kohli, Shri Mayank Bansal, Shri Sumit Babbar and also Shri R.M. Sharma on behalf of the opponents. It was explained by all the respondents counsel that the effort on the part of the informant was only to get the business. The informant seriously objected to the stance of the government bodies to insist upon the accreditation only by OP1 and OP2 as it was further pointed out that practically all the notifications were published much before the informant even stepped into the market. In one example, Shri Babbar pointed out as also Ms. Kohli suggested that firstly, it was the choice of the government agencies who were making huge programmes to insist on the accrediting body of their choice as they were like any other consumer in the market. Secondly, it was pointed out that at the time when the notifications were issued, the informant was nowhere in the picture. They further explained to us that even at that time the notifications suggest that any other accreditation body comparable with the OP1 or as the case may be OP2 in their international standards were acceptable to the government companies.

10. We have seen the order very carefully and we have also heard Shri Sharma for quite sometime. The point urged by Shri Sharma is that these government agencies by insisting on an accreditation only by OP1 and OP2 were hindering the competition and in effect were denying the level playing field for the informant. It was pointed out by Ms. Kohli that OP1 and OP2 having been approached by the informant were even prepared to discuss the things with them. However, the informant instead of cooperating with them chose to rush to the CCI by way of information. The statement could not be very seriously contradicted by the learned counsel for the appellant herein. Be that as it may, the real position, which comes out of the debate, is that it is not compulsory for



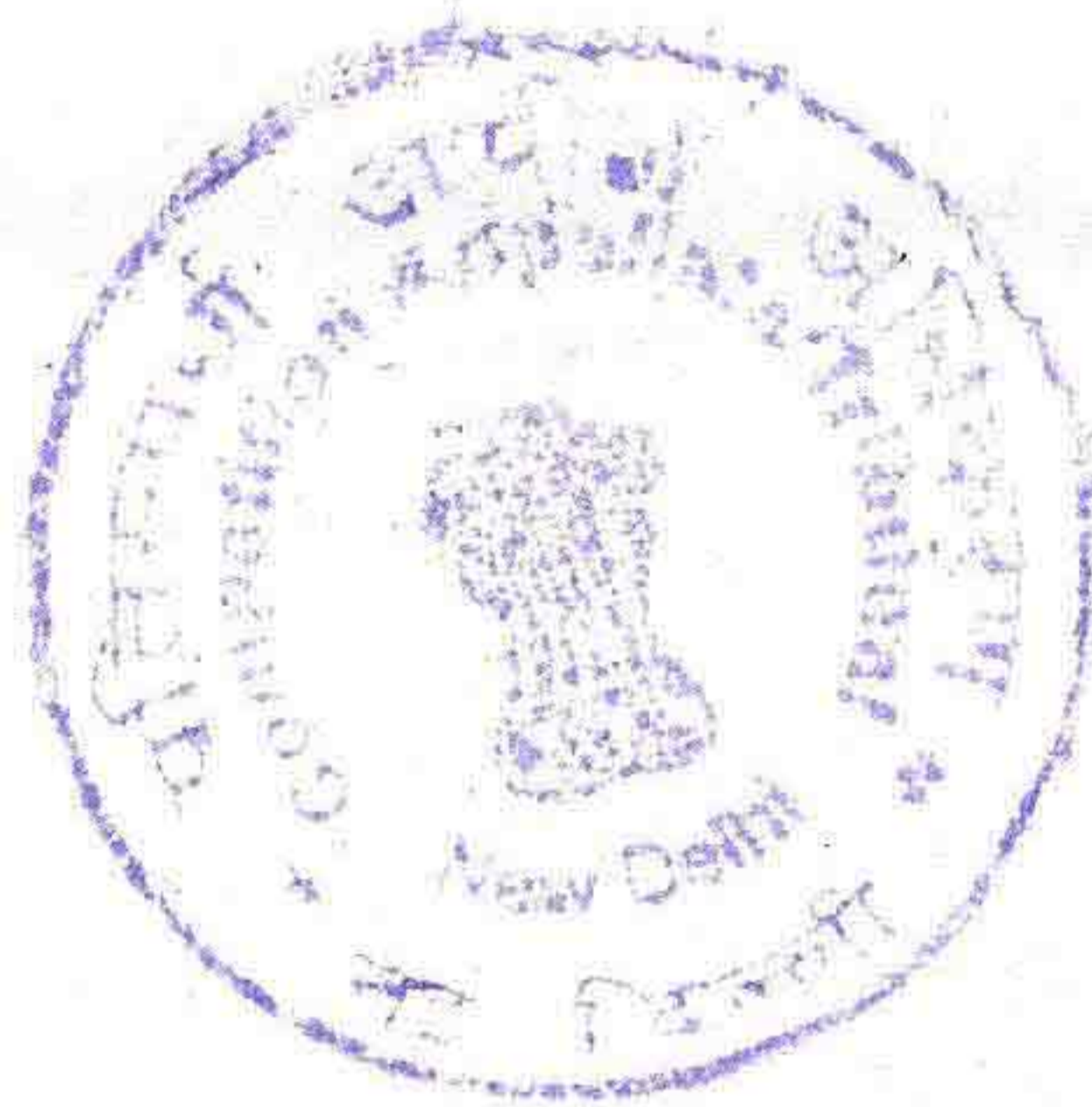
any accreditation body to be under any network of law and even the accreditation bodies operating outside the India are free to grant the certificates of accreditation even to the players in India. This is apart from the fact that it is obvious that the informant is a competing body with the OP1 and OP2 and, therefore, can not complain if the opponents Nos.1 and 2 advertise their own skill and importance. One advertisement was placed before us by Shri Sharma which appears to have been issued by the NABCB wherein the caution has been given that the certification bodies were being accredited by bodies not members of IAF and that the certificates issued by them being not the members of IAF would cause further headaches and that the CB should note that the accreditation should be done by the bodies who were the members of IAF. Shri Sharma takes a very serious exception to this advertisement and says that this was nothing but a trick to monopolise and such kind of advertisement had the effect of creating an impression against the bodies like the informant. Shri Sharma also insisted that reading such advertisement and adverse perception could be created in the minds of clients of the certification bodies or as the case may be. We do not think so. It is only a caution that a certificate issued by the accreditation companies who were not the members of IAF could specially cause trouble. That is all the impression the advertisement gives. We are, therefore, not in a position to accept the contention of Shri Sharma.

11. The CCI had correctly noted that opponent Nos.1 and 2 were not the dominant players that there is no activity on their part to keep any player or any competitor out of the market which is clear from the fact that any body would have the authority to act as the accrediting body provided such body has the necessary infrastructure. We, therefore, do not think that this is the case where



the appellant had made out any prima facie case before the CCI. We are in agreement with the order of the CCI and dismiss the appeal.

Under the circumstances, there will be no orders to the costs.



(Justice V.S. Sirpurkar)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member