



COMPETITION COMMISSION OF INDIA

Case No. 50 of 2014

In re:

**Prem Prakash
Industrial Area, Khurai Road
BINA, Sagar - District
Madhya Pradesh – 470113.**

Informant

And

**The Principal Secretary
Madhya Pradesh Public Works Department
Government of Madhya Pradesh
Vallabh Bhawan
Mantralya, Bhopal
Madhya Pradesh – 482004**

Opposite Party No. 1

**The Director General
Central Public Works Department
Nirman Bhawan
New Delhi – 110001**

Opposite Party No. 2

CORAM

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**



Mr. U.C. Nahta
Member

Justice G. P.Mittal
Member

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| Appearances | <i>For the</i> | Shri Prem Prakash, Informant-in-person |
| | <i>Informant</i> | Shri B. N. Gaur, Assistant |
| | <i>For OP-1</i> | Shri Sanjib Kumar Mohanty, Advocate, Sr. Panel Central Government Counsel |
| | <i>For OP-2</i> | Shri Sanjib Kumar Mohanty, Advocate, Sr. Panel Central Government Counsel Shri Vijay Prakash Sahu, Superintendent Engineer, CPWD Shri R.K. Singh, Executive Engineer, CPWD Shri K.R. Meena, Executive Engineer, CPWD |

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

1. The information in this case was filed by Shri Prem Prakash (the 'Informant') under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against the Principal Secretary, Public Works Department, Government of Madhya Pradesh ('OP-1') and the Director General, Central Public Works Department, New Delhi ('OP-2') alleging contravention of the provisions of Sections 3 and 4 of the Act.



2. The Informant is the proprietor of Venus Testing and Research Laboratory. It is claimed that the laboratory of the Informant has been assessed and certified for physical and chemical material(s) testing by the Accreditation Commission for Conformity Assessment Bodies ('ACCAB') to meet the requirements of International Standard ISO/IEC 17025:2005.
3. OP-1 is the Principal Secretary of the Public Works Department of the Government of Madhya Pradesh ('MPPWD'). MPPWD is the principal agency of the Government of Madhya Pradesh engaged in planning, designing, construction and maintenance of Government assets like roads, bridges, road over bridges, fly overs and buildings through its two wings *i.e.*, Public Works Department (B&R) and Project Implementation Unit.
4. OP-2 is the Director General of the Central Public Works Department ('CPWD'), New Delhi. CPWD is a comprehensive construction management department and the principal agency of the Government of India responsible for creating assets and providing services including planning, design, construction and maintenance of office and residential buildings as well as other structures of various ministries and departments of Government of India and other autonomous bodies and public sector enterprises. Its activities are spread throughout India.
5. The Informant was aggrieved that the Opposite Parties (OP-1/ MPPWD and OP-2/ CPWD hereinafter collectively referred to as 'OPs') had refused to consider his laboratory for testing construction materials on the ground that it has not been accredited by the National Accreditation Board for Testing and Calibration Laboratories ('NABL').



6. The Informant had submitted that MPPWD had issued an order dated 16.09.2013 wherein it was made mandatory for the contractors of PWD in the state that 20% of their construction material used in the work was to be tested by accredited laboratories of NABL. Earlier *vide* order dated 03.09.2012, MPPWD had made 10% quantity as mandatorily required to be tested by NABL accredited labs in the areas of Bhopal and Sagar. Similarly, CPWD had issued “Guidelines for Approval of New Products and Laboratories” dated 18.12.2013 as well as Office Memorandum dated 29.05.2014 for “Modification in CPWD Works Manual 2012” which imposed a condition that the outside private laboratories must be NABL approved.
7. The Informant had alleged that there was nothing as ‘NABL accreditation’. It was stated in the information that NABL is an autonomous body under the aegis of Department of Science and Technology (‘DST’), Government of India registered under the Societies Registration Act, 1860. Further, the Informant has submitted that NABL is merely an accreditation body accrediting laboratories as per ISO/IEC 17025:2005 international standard. It is neither a statutory nor a constitutional body. The Informant had highlighted that, as per the requirement of this international standard, if a laboratory wanted to get accreditation for part or all of its testing and calibration activities, it should select an accreditation body that operated in accordance with ISO/IEC 17011 international standard. Thus, any organization that operated its system as per ISO/IEC 17011 international standard could accredit laboratory for ISO/IEC-17025:2005 international standard.
8. The Informant averred that there were more than hundred accreditation bodies throughout the world and three accreditation bodies in India. However, the aforesaid orders/ memorandum of the OPs were promoting the trade name of a



single accreditation body *i.e.*, NABL which was unfair as it consequently affected the business of those laboratories which were not accredited by NABL.

9. Accordingly, it was alleged by the Informant that by incorporating the condition that materials used for construction should be tested by laboratories accredited only by NABL, the OPs had imposed arbitrary and unreasonable condition of eligibility, which was adversely affecting the competition in the relevant market. Hence, the Informant had challenged the circulars/orders of the OPs and alleged violation of Section 3 and 4(2)(a)(i) of the Act in the matter.
10. The Commission had passed an order under Section 26(2) of the Act dated 29.10.2014 in this case wherein the Commission had held that *“the activities being performed by the Opposite Parties do not come under the definition of ‘enterprise’ in terms of Section 2(h) of the Act as they are not directly engaged in any economic and commercial activities. The Opposite Parties have no existence in the relevant market, except for laying down norms as to the authorization of accreditation bodies for specific purposes. Their role is limited to planning, designing, construction and maintenance of Government assets as such provisions of Section 4 of the Act are not attracted against them. The Opposite Parties have issued circulars only and they were not operating in the relevant market. Therefore, the conduct of the Opposite Parties does not give rise to any competition concern.”*
11. An Appeal no. 51/2015 (*Prem Prakash v The Principal Secretary, Madhya Pradesh Public Works Department and Ors.*) was filed before the Competition Appellate Tribunal (the ‘COMPAT’) by the Informant against the above order passed by the Commission. The COMPAT in its order dated 17.02.2016 referred to its order in *Rajat Verma v. Haryana Public Works (B&R) Department and others* (Appeal no. 45 of 2015) dated 16.02.2016 and allowed the appeal.



12. It noted that in Rajat Verma's case, while considering the issue of whether the Public Works Department of the Government of Haryana is an 'enterprise' under the Act, the COMPAT in its order referred to the observations made in the dissent note of Member Augustine Peter at length. Further, the COMPAT observed as follows:

“17. If the term ‘enterprise’ as defined in Section 2(h) is read in conjunction with the definition of the term ‘person’ and ‘service’ it becomes clear that the legislature has designedly included Government departments in relation to any activity relating to storage storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. The width of the definition of ‘enterprise’ becomes clear by the definition of the term ‘service’. The inclusive part of the definition of ‘service’ takes within its fold service relating to construction and repair. These two words are not confined to construction and repair of buildings only. The same would include all types of construction and repair activities including construction of roads, highways, subways, culverts and other projects etc. It is thus evident that if a department of the Government is engaged in any activity relating to construction or repair, then it will fall within the definition of the term 19 ‘enterprise’. We may add that there is nothing in Section 2(h) and (u) from which it can be inferred that the definitions of ‘enterprise’ and ‘service’ are confined to any particular economic or commercial activity. The only exception to the definition of the term ‘enterprise’ relates to those activities which are relatable to sovereign functions of the Government and activities carried by the four departments of the Central Government, i.e., atomic energy, defence, currency and space.”



Also, it was observed that

“19. In the execution of work relating to construction of roads, bridges etc., the contractor may be a service provider qua the department but the beneficiary of these activities is undoubtedly the general public qua whom the department acts as a service provider. The roads and bridges etc. constructed by the Haryana Public Works Department or HSRDC either by themselves or through private agencies are used by the general public in more than one ways including travelling and carriage of goods. In other words, the Public Works Department is a provider of service to the public and from that perspective it clearly falls within the ambit of term ‘enterprise’

20. Whether the activity of procuring construction services is with a view to make profit is not the concern of the Act. What is important is that the Public Works Department by inviting tenders for award of contract for construction of roads, bridges etc. is interfacing with the wide market of road and bridge construction services in the State. Therefore, there is no escape from the conclusion that it is an enterprise within the meaning of Section 2(h) of the Act....”

“22. It is neither the pleaded case of the respondents nor Shri A.P. Singh has argued and in our opinion rightly so that the activities of the Public Works Department, Government of Haryana are relatable to sovereign functions of the Government. Any such argument would have been rejected in view of the law laid down by the Supreme Court in Bangalore Water Supply and Sewerage



Board Vs. A. Rajappa (supra) and N. Nagendra Rao and Co. Vs. State of A.P. (supra) and other decisions referred to in the dissenting note.”

13. On the basis of the above observations, the COMPAT held that the Public Works Department, Government of Haryana fell within the definition of the term ‘enterprise’ under Section 2(h) of the Act and that the same would be the position *qua* Public Works Department of other States as also the Central Public Works Department.
14. Thus, in view of the above order passed in Rajat Verma’s case, the COMPAT held that the view taken by the Commission on the maintainability of the information filed by the Appellant in the present case was legally unsustainable and that the impugned order was liable to be set aside. As a result, the COMPAT allowed the appeal in the present case and the matter was set aside and remitted to the Commission for considering whether the allegations contained in the information filed by the Appellant made out a *prima facie* case requiring investigation under Section 26(1) of the Act.
15. Pursuant to remission of the matter to the Commission, the Commission heard the Informant and OP-1 to determine whether a case for contravention of the provisions of Section 4 of the Act was made out in this case.
16. It is pertinent to mention here that in order to ascertain abuse of dominance by OPs in terms of Section 4 of the Act, a pre-requisite under the Act is to determine the relevant market in which OPs operate and whether they are dominant in that relevant market.



17. It is noted that while framing its decision in Rajat Verma's case, the COMPAT had referred to the observations of Member Augustine Peter in his dissent note. With respect to relevant market and dominance of Haryana PWD, the observations of Member Augustine Peter were as follows:

“42. The relevant market in this case is the “market for procurement of construction services through bidding for roads and bridges in the state of Haryana”. In this market, the Public Works Department (B&R) of Haryana is the dominant player in the geographical market of State of Haryana in the sense that they are responsible for construction of State Highways, Major District Roads and some of the other District Roads, Railway Over-Bridges (ROBs), Railway Under Bridges (RUBs), Bridges, rehabilitation of public bridges, and construction of National Highways in the State of Haryana. Major construction activities relating to public roads and bridges are through tendering and are under the charge of OPI.

43. As far as procurement of the construction services for roads and bridges by tender is concerned OPI has near monopoly in the state of Haryana. And I am of the prima facie view that OPI is a dominant player in the relevant market thus defined.”

18. In addition to above, some of the observations of the COMPAT in Rajat Verma's case which are pertinent with respect to relevant market and the position of PWD are as follows:

“18. The main task of the Public Works Department of the Government of Haryana is planning and construction of roads, bridges, projects etc. Every year, the State Government allocates



budget to the Public Works Department for undertaking these activities. After creation of the State in 1966, this task was initially performed by the department through its officers and employees. With the expansion of cities and proliferation of the activities relating to trade, commerce, transport etc., it became extremely difficult to accomplish this task at the departmental level. Therefore, the State Government decided to outsource the planning, designing and construction of roads, bridges etc. by inviting tenders and awarding contract to the lowest bidder. Of course, the over-all control continues to be with the department. In due course, the State Government created a separate agency i.e. Haryana State Roads and Bridges Development Corporation Ltd. (HSRDC)..... The position of the Public Works Department and HSRDC is unique in the field of construction of roads, bridges etc. and no public or private enterprise can compete with it in terms of scope and scale of the activities. In 49 years after creation of the State of Haryana, almost 24,000 Kms. roads have been constructed by the Public Works Department of the State and its instrumentalities. These include State Highways (2,128 Kms.), Major District roads (1,425 Kms.) and other district roads (20,315 Kms.)....

“20. ...the Public Works Department by inviting tenders for award of contract for construction of roads, bridges etc. is interfacing with the wide market of road and bridge construction services in the State...”

19. In view of the above observations, it is apparent that based on the activities of State PWD and CPWD, the relevant product market in which the OPs operate would be the “market for procurement of services for construction of roads and



bridges etc. through tendering”. In the facts of this case, the service being procured by State PWD *i.e.*, MPPWD and CPWD is the services of laboratories for testing construction materials; albeit such procurement by them is indirectly through contractors. OPs have laid down the norms for the contractors for testing construction materials specifying that the laboratory(s) from which the testing is done should be accredited by a specific accreditation body. Thus, OPs are indirect procurers of services of laboratories. Accordingly, the Commission is of the opinion that the relevant product market in the present case may be defined as the “*market for procurement of services of laboratories for testing materials used in the construction of roads and bridges, etc.*” As regards the relevant geographic market, for State PWD, the market would be the respective state *i.e.*, *Madhya Pradesh* and for CPWD the market would be the territory of *India*.

20. With respect to the dominance of MPPWD and CPWD in their respective relevant markets, it is evident from the observations of COMPAT that the position of State PWD and CPWD is unique in the field of construction of roads, bridges *etc.* and no public or private enterprise can compete with them in terms of scope and scale of the activities. Therefore, even though the services of laboratories such as that offered by the Informant can be procured by the contractors, at the behest of their customers or by themselves, for checking the quality of construction materials used for construction works from other projects than those tendered by MPPWD or CPWD, the volume of procurement by MPPWD and CPWD would remain unmatched. Thus, MPPWD and CPWD would be dominant in their respective relevant market merely by virtue of their unique position.
21. Coming to the examination of the alleged abusive conduct of OPs, the Commission notes that the allegations made by the Informant relate to imposition of unfair conditions by OP-1 with respect to the invited tenders for



construction of roads and bridges *etc.* in the State of Madhya Pradesh whereby the contractors are required to get 20% of the construction materials tested from NABL accredited laboratories. Further, CPWD in its guidelines also prescribes that the laboratory from which the tests are done must be approved by NABL. It is averred that for purposes of assessment of quality, OPs could have merely prescribed the quality standards *i.e.*, ISO 9001 certified or accredited as per ISO/IEC 17025:2005 standard, instead of specifying the trade name of the accreditation body.

22. In order to ascertain the alleged abusive conduct of OPs, the Commission directed the parties to appear for hearing. The Informant in his submissions before the Commission relied on the case decided by COMPAT in Appeal No. 03/2013 (*ACCAB v Quality Council of India & Ors.*) wherein it was observed that “...*any body would have the authority to act as the accrediting body provided such body has the necessary infrastructure...*”. Further, the Informant submitted that various Government departments such as BHEL, Ministry of Environment, Forest and Climate Change, Bureau of Indian Standard, Military Engineering Services, FSSAI have mentioned standards *i.e.*, accreditation as per ISO/IEC 17025:2005 in their circulars instead of mentioning NABL accreditation.
23. The Informant stated that *vide* letter dated 11.12.2013, he had requested OP-1 to review its circulars/ orders imposing the unfair condition *i.e.*, requiring the contractors to get the construction materials tested from ‘NABL accredited’ laboratories. However, neither amendment was made by OP-1 nor any clear grounds were given for not undertaking such amendments.
24. Further, the Informant alleged that OP-2 by incorporating the condition in its Works Manual that the ‘Lab must be NABL approved’, has compelled the



laboratories to first approach NABL if they want business from OP-2 or any other departments/ Ministry following the guidelines of OP-2. It is alleged that due to this condition, the laboratories are left with no choice but to approach NABL for accreditation even though there may be more accreditation bodies available in India.

25. It is averred that the condition that the laboratories engaged for testing construction material must be accredited by NABL is an arbitrary and unreasonable condition imposed by the OPs which is adversely affecting competition in the market. The Informant has submitted that NABL is only an accreditation body that accredits laboratories as per international standard ISO/IEC 17025:2005. It is argued that accreditation is not mandatory but it merely adds a level of confidence as 'accredited' means that an accreditation body has independently checked that the laboratory operates according to international standards. It is submitted that the information received from the DST and NABL under the Right to Information Act, 2005 (the 'RTI Act') shows that neither NABL is the sole accreditation body authorised by the Government of India to accredit laboratories for testing and calibration activities nor it is necessary for an accreditation body to take permission from DST to run accreditation programmes in India. Accordingly, it is alleged that the condition imposed by the OPs is unfair and biased in favour of one accreditation body without any basis.

26. OPs have denied the above allegations of the Informant and have submitted that the entire case is based on erroneous facts and misleading statements with the ulterior motive to tarnish the credibility and image of the OPs.

27. In their Affidavit submitted to the Commission, OPs have stated that their role is limited to planning, designing, construction and maintenance of the



Government assets and that they are not operating in the ‘market for services of accreditation of laboratories in India’, except for laying down norms as to the authorization of accreditation bodies for specific purposes. It is averred that they had issued circulars laying down norms and guidelines under ‘MP Works Department Manual’ and ‘CPWD Works Manual’ respectively which are their reference documents for providing a basic framework for planning, designing and execution of construction work. As such, their conduct does not relate to the above-stated relevant market. Hence, the conduct of OPs cannot be construed to be in violation of the provisions of the Act.

28. OP-1 has averred that it had only adopted the norms in vogue in the Ministry of Road Transport and Highways (‘MORTH’), Government of India while issuing the circulars prescribing the testing of materials through NABL approved laboratories. It is submitted that MORTH while sanctioning road works for the State of Madhya Pradesh made it compulsory to get independent quality control tests of all items from any of the NABL accredited laboratories as per IRC: SP: 94-2011. Consequently, the two circulars dated 13.09.2012 and 16.09.2013 were issued by OP-1 adopting the norms of MORTH. Further, OP-1 has stated that, in general, where MPPWD does not have specifications or norms on an issue in the MP Works Department Manual, the provisions and guidelines of CPWD and MORTH are adopted.

29. With respect to the CPWD Office Memorandum No. 308 dated 29.05.2014, which modified Para 53.20 of the CPWD Works Manual-2014 and required that outside private laboratories must be NABL approved, OP-2 has submitted that in this Office Memorandum, preference is given to laboratories owned or funded by the Central or State Government/ Indian Institute of Technology (‘IIT’) or National Institute of Technology (‘NIT’) laboratories/ Government Engineering College laboratories *etc.* over the outside private laboratories to ensure that



materials of stipulated quality are used in construction works. Private laboratories may be approved if Government laboratories are not available in the vicinity of the project. In terms of the provision, outside private laboratories are required to be accredited by NABL and also approved by the Additional Director General, CPWD, so that uniform quality can be ensured at the construction stage itself by 'process control' in a pre-determined manner rather than 'quality control' at the post construction stage *i.e.* after the damage has occurred.

30. Further highlighting the reason for the above provision, OP-2 has stated that in the Government laboratories, the tests are conducted by technically competent officials recruited through a prescribed selection procedure of Government. Further, all government institutes, IITs, NITs, Central and State Research Centres, Centrally and State funded laboratories are centres for excellence and have high quality faculty and students. On the other hand, the private labs follow their own procedure in recruiting technicians/ staffs and use apparatus/ machinery of their choice for testing. Further, the Government laboratories are subjected to audit, vigilance and quality control periodically which ensure the reliability of the test results and the quality of materials used in construction work. On the other hand, there are no checks on the private laboratories regarding the competency, qualification and experience of staff and availability of required machineries. Hence, in case of private laboratories, accreditation by NABL, an autonomous body under the aegis of the Government of India, plays the role of accrediting labs as per international norms.

31. OPs have averred that had NABL been made a party by the Informant in the present matter, more specific information with respect to NABL would have been available for adjudication. Having said that, OPs have explained in their submissions that laboratory accreditation is a procedure by which an authoritative body gives formal recognition of technical competence for specific



tests/ measurements, based on third party assessment and following international standards. It is stated that laboratory accreditation services to testing and calibration laboratories are provided by NABL in accordance with ISO/ IEC 17025:2005 'General Requirements for the Competence of Testing and Calibration Laboratories'. Further, NABL has established its accreditation system as per ISO/ IEC: 17011: 2004 'Conformity Assessment – General Requirements for Accreditation Bodies accrediting Conformity Assessment Bodies'. NABL is also a full signatory to the International Laboratory Accreditation Cooperation ('ILAC') and Asia Pacific Laboratory Accreditation Cooperation ('APLAC') Mutual Recognition Arrangement ('MRA') which are based on mutual evaluation and acceptance by other MRA signatories. Such international arrangements facilitate acceptance of tests/ calibration of results between countries which the MRA signatories represent.

32. Referring to the three accreditation bodies mentioned by the Informant in the information, OPs have stated that while NABL is a full member of ILAC offering accreditation as per various standards including ISO/ IEC 17025:2005, ACCAB is an associate member of ILAC whose scope of activities is not known. Further, National Accreditation Board for Certification Bodies ('NABCB') is an ILAC MRA signatory but with a different scope *i.e.*, Inspection (ISO/ IEC: 17020) and it does not offer an accreditation program for material lab testing and calibration.

33. OPs have stated that though accreditation to laboratories as per ISO/ IEC 17025:2005 international standard can be given by any accreditation body whose system is as per ISO/ IEC 17011:2004 international standard, the users of the services of the accreditation body also consider other credentials such as whether it is a full signatory to ILAC/ APLAC MRA, *etc.* and it is the prerogative of the user, whether it is the Government/ Regulator/ Buyer, to mention what they



want. It is further submitted that to the best of OPs' knowledge, there is no laboratory accreditation body in India other than NABL, having ILAC/ APLAC full MRA signatory status for grant of accreditation as per ISO/ IEC 17025 international standard. Further, OP-2 has submitted that the credibility and primacy of NABL has been accepted in various judicial decisions including a recent judgment dated 13.08.2015 of a division bench of the Hon'ble High Court of Bombay in "*M/s Nestle India Ltd.v The Food Safety and Standards Authority of India & Ors.*" as well as in the Guidelines for Recognition of Environmental Laboratories under the Environment (Protection) Act, 1986 and Food Safety and Standard Rules, 2011.

34. Having considered the above submissions of the OPs, it appears that NABL enjoys a unique position among the accreditation bodies that exist in India for accreditation of laboratories as per ISO/ IEC 17025 international standard, as detailed above. Accordingly, the preference of OPs for NABL accredited laboratories is evident. However, it is also observed that from the averments of the Informant as well as OPs that NABL is not the only accreditation body which can certify laboratories as per the applicable international standards.
35. Accordingly, the issue before the Commission for examination is whether the condition imposed by OPs requiring the contractors to check the quality of the construction materials tested from NABL accredited laboratories instead of prescribing the quality standard *i.e.*, material testing from a laboratory accredited as per ISO/ IEC 17025:2005 standard wherein the said laboratory is assigned by an accreditation body operating as per ISO/ IEC 17011:2004 standard, is anti-competitive or not?
36. The Commission notes that the basic objective of competition law is promotion and protection of the competitive process and ensuring a level-playing field for all market players that will help markets to be competitive. Thus, in public procurement processes, it is desirable that the conditions imposed on suppliers



are not such that they exclude firms from the market. Rather endeavour should be to promote competition by being more flexible so that more number of firms would be eligible to provide services. Also, the conditions should be such that they ensure equal and non-discriminatory treatment as well as the best possible environment for competition. Accordingly, when a department of the Government such as OPs require quality certificates in their tender conditions, the terms must not specify any specific accrediting entity rather the terms should specify the standards. This would not only enable participation by more laboratories but also ensure that the laboratories which have been accredited as per the stipulated international standards are not discriminated based on the accreditation body that certifies them.

37. Thus, in light of the above, the condition imposed by the OPs that private laboratories be approved/ accredited by NABL seems to be anti-competitive as it appears to be favouring a single accreditation body restricting the number of eligible private laboratories whose services can be procured indirectly by OPs.

38. Accordingly, the Commission is of the considered opinion that imposition of such a condition by MPPWD and CPWD is in contravention of the provisions of Section 4(2)(a)(i) of the Act.

39. However, it is noted that OP-2 in its additional Affidavit dated 25.11.2016 has brought to the notice of the Commission that, in a recent development, Para 53.20 of the CPWD Works Manual-2014 has been modified *vide* Office Memorandum dated 22.11.2016. The sentence “Lab must be NABL approved” in Para 53.20 has now been substituted by the sentence “For the purpose of Lab accreditation by NABL or any other accreditation body which operates in accordance with ISO/IEC 17011 and accredits labs as per ISO/IEC 17025 for testing and calibration scopes shall be eligible.” Therefore, presently, OP-2/ CPWD is not referring to any particular accreditation body like NABL but only to an international standard. The Commission notes that the above modification



made by OP-2 is in compliance with the principles of competition law and will ultimately enhance the competition in the market.

40. Further, from the submission of MPPWD dated 24.11.2016, it is noted that, in a recent development of its own, MPPWD has created its own well-equipped laboratories at Circle Level within the State of Madhya Pradesh with one Central Laboratory in the capital at Bhopal which is well equipped with latest testing equipment. In view of this development, it has submitted that the condition of 20% material testing through NABL accredited laboratories is no more a mandatory condition and the testing from the Government owned circle laboratories and Central Laboratories would assure the quality of work.
41. In this regard, the Commission observes that to ensure quality in public procurement processes certain criteria have to be laid down and it is essential that this discretion vest with the OPs. All that competition law requires is that the processes be fair, transparent and designed to promote competition. Thus, when a department decides to give preference to its own laboratories over private laboratories to ensure quality, it cannot be said that competition is hampered. Such choice is the prerogative of the department. However, when a department procures services from outside entities, it has to be careful that the conditions that it prescribes do not impair competition.
42. While OP-2 has taken the above into consideration and modified the CPWD Works Manual-2014, OP-1 also has stated that it has made certain modifications so that the condition of 20% material testing through NABL accredited laboratories is no more a mandatory condition. However, the Commission deems it appropriate to prescribe that OP-1 also adopts the modification made by OP-2 in the CPWD manual or makes similar modification to the MPPWD Works Manual to ensure compliance with the principles of competition law.



43. Thus, in the light of the recent developments brought to the notice of the Commission by OP-1 and OP-2 *vide* their respective affidavits filed on 25.11.2016, the Commission is of the view that there exists no prima facie competition issue remaining in the matter for investigation. Accordingly, the case is closed under the provisions of Section 26(2) of the Act.
44. Before concluding, the Commission also deems it appropriate to consider the application dated 23.04.2016 filed by the Informant with the Commission whereby the Informant had *inter alia* urged that the Commission take action against NABL under Section 45(1) of the Act for making various false information available on its website. In this regard, the Commission notes that neither NABL is a party to the proceedings in this case nor was it called upon to furnish information at any stage in the matter. Accordingly, the application filed by the Informant is not maintainable and the same is dismissed.
45. The Secretary is directed to inform all concerned accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 17.03.2017