

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Competition Appeal (AT) No. 16 of 2017**

(Arising out of Order dated 29<sup>th</sup> June, 2017 passed by the Competition Commission of India in Case No. 14 of 2017)

**IN THE MATTER OF:**

**Prem Prakash**

**...Appellant**

**Vs**

**Bureau of India Standard & Ors.**

**....Respondents**

**Present:**

**For Appellant: Mr. Prem Prakash in person.**

**For Respondents: Ms. Tanu Priya Gupta, Advocate for BIS.  
Mr. V.K. Shukla, Advocate.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Appellant- 'Informant' filed application under Section 19(1) (a) of the Competition Act, 2002 ("the 'Act'" for short) alleging contravention of the provisions of Section 4 of the Act by the Director General, Bureau of Indian Standards- (1<sup>st</sup> Respondent herein/ 'Opposite Party No.1') and the Secretary, Department of Consumer Affairs, Food and Public Distribution (2<sup>nd</sup> Respondent herein/ 'Opposite Party No.2').

2. The Competition Commission of India- (“Commission” for short) by impugned order dated 29<sup>th</sup> June, 2017 opined that there is no *prima facie* case of contravention of Section 4 of the Act made out and thereby, closed the matter in terms of provisions of Section 26 (2) of the Act.

3. The case of the Appellant- ‘Informant’ is that he is the proprietor of a material testing laboratory namely, ‘Venus Testing and Research Laboratory’, which provides testing services throughout the State of Madhya Pradesh and is accredited as per ISO/IEC-17025. His grievance relates to a Scheme of Bureau of Indian Standard i.e. ‘Bureau of Indian Standards, Laboratory Recognition Scheme’ (“Laboratory Recognition Scheme” for short), particularly with regard to one of the conditions which stipulates that a laboratory seeking recognition under this Scheme should have an accreditation to IS/ISO/IEC-17025 or ISO-IEC-17025 in the respective field of testing such as mechanical, electrical, chemical or microbiological as applicable.

4. Further, the accreditation body (through which the accreditation is taken by the Appellant- ‘Informant’ lab) should be a full member of ‘Asia Pacific Laboratory Accreditation Corporation’ and/ or ‘International Laboratory Accreditation Corporation’.

5. It was alleged that although lab recognition activity is mentioned in the ‘Bureau of Indian Standards Act, 1986 (“BIS Act” for short), neither the standard ISO/IEC-17025 nor the name ‘Asia Pacific

Laboratory Accreditation Corporation’ and ‘International Laboratory Accreditation Corporation’ has been mentioned in the Act or its Rules. In spite of this, ‘Bureau of Indian Standard’ has made the standard IS/ISO/IEC-17025 as well as full membership of ‘Asia Pacific Laboratory Accreditation Corporation’ and ‘International Laboratory Accreditation Corporation’ mandatory in the ‘Laboratory Recognition Scheme’ which is without justification and amounts to contravention of provisions of Section 4 of the Act.

6. It was submitted that by imposition of such a condition in the ‘Laboratory Recognition Scheme’, ‘Bureau of Indian Standard’ has contravened the provisions of Section 4 of the Act as the laboratories which are accredited by an accreditation body that is not a member of ‘Asia Pacific Laboratory Accreditation Corporation’/ ‘International Laboratory Accreditation Corporation’ cannot get recognized under the ‘Laboratory Recognition Scheme’.

7. Learned counsel appearing on behalf of the ‘Bureau of Indian Standard’ submitted that the information against the ‘Bureau of Indian Standard’ is not maintainable and it does not come within the definition of ‘enterprise’ as has been defined in Section 2(h) of the Act. The said Section is not at all applicable to 1<sup>st</sup> Respondent which is a statutory body established under the ‘BIS Act, 1986’ and hence not maintainable.

8. It was further submitted that the 'Commission' has noted the aforesaid fact and also come to the definite conclusion that no case was made out to allege violation of Section 4 of the Act.

9. Learned counsel for the 'Commission' while submitted that no case has been made out and also submitted that the provisions as laid down by 'Bureau of Indian Standard' in the 'Laboratory Recognition Scheme' do not come within the meaning of Section 4.

10. The grievance of the Appellant is mainly against Clause 1.5.1.1 of the 'Laboratory Recognition Scheme', which reads as follows:

*“1.5.1.1 Accreditation: The laboratory seeking recognition shall have accreditation to IS/ISO/IEC 17025 or ISO/IEC 17025 in the respective field of testing, such as Mechanical, Electrical, Chemical and Microbiological, as applicable. The accreditation body (through which the Accreditation is taken by the applicant lab) shall be a full member of Asia Pacific Laboratory Accreditation Co-operation (APLAC) and/ or International Laboratory Accreditation Co-operation (ILAC).”*

11. For the purpose of determining the violation of Section 4, it is desirable to notice the scope of definition of 'enterprise' to determine

whether the 'Bureau of Indian Standards' falls within the scope of 'enterprise', which reads as follows:

*“(h) “enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.”*

12. The 'Bureau of Indian Standards' has been set up under the 'BIS Act, 1986' with the objective of harmonious development of the activities

of standardization, marking and quality certification of goods and matters connected therewith or incidental thereto.

13. In the present case, we find that the 'Bureau of Indian Standards' has carried out the impugned activity, in question, for which the criteria, required to be prescribed for recognition of laboratories under 'Laboratory Recognition Scheme' have been laid down with the purpose to ensure quality in laboratory testing services by outside laboratories, which would provide product certification under its product certification scheme. Thus, the activity, under consideration, is being carried out by the 'Bureau of Indian Standards' under the mandate vested in it under the 'BIS Act'. Thereby, we hold that the 'Bureau of Indian Standards' has acted within the scope of the 'BIS Act' under which it has been created.

14. Admittedly, the impugned activity of the 'Bureau of Indian Standards' under consideration does not constitute an economic activity as envisaged under Section 2(h) of the Act.

15. The said activity is carried out in terms of Section 10(1) h of the 'BIS Act, 1986' which relates to 'functions of the Bureau' and reads as follow:

*"10. **Functions of the Bureau.**— (1) The Bureau may exercise such powers and perform such duties as may be assigned to it by or under this Act and, in particular, such powers include the power to—*

.....(h) *establish, maintain and recognise laboratories for the purposes of standardisation and quality control and for such other purposes as may be prescribed”*

16. Section 10(2) (a) of the ‘BIS Act, 1986’ relates to ‘establishment, maintenance and recognition of laboratories’ and Section 10(2) (b) relates to ‘register of recognized laboratories’, which reads as follows:

*“10 (2) (a)– **Establishment, maintenance and recognition of laboratories**– The Bureau may recognize any laboratory in India or in any other country for carrying out testing of samples in relation to use of the Standard Mark and such other functions as may be necessary. In case any laboratory after recognition ceases to fulfill any conditions laid down at the time of recognition it shall be liable to be derecognized by the Bureau. The guidelines for recognition and de-recognition of laboratories shall be laid down by the Bureau.*

*2 (b)- **Register of recognized laboratories**– the Bureau shall cause to maintain a register of such laboratories as are recognized by it for testing*

*samples of articles or processes in relation to the relevant Indian Standards.”*

17. Therefore, it is evident that as per the Act, the ‘Bureau of Indian Standards’ is exercising its power to perform such duties as assigned under the Act for maintaining and recognition of laboratories for the purposes of standardization and quality control and for such other purposes as prescribed under the Act.

18. In view of the specific power entrusted on the ‘Bureau of Indian Standards’ under the Act, we are also of the opinion that the activity of the ‘Bureau of Indian Standards’ does not fall within the scope of the definition of ‘enterprise’ in terms of Section 2(h) of the Act nor it can be alleged to be an activity in contravention of Section 4 of the Act.

19. We find no merit in this appeal. It is, accordingly, dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI  
2<sup>nd</sup> May, 2019

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