

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3525-3526/2017

COMPETITION COMMISSION OF INDIA

APPELLANT (S)

VERSUS

GLAXOSMITHKLIEN PHARMACEUTICALS LTD.
AND ORS. ETC

RESPONDENT (S)

O R D E R

A perusal of the order of the Competition Appellate Tribunal (COMPAT) amply demonstrates that on the facts of this case, no case for collusive bidding was made out. The gist of the finding in this behalf is re-produced herein below:

"In our opinion, the investigation conducted by the DG lacked objectivity and the findings recorded by him are *ex facie* erroneous and legally unsustainable and the Commission committed grave error by approving the conclusions of the DG that the appellants are guilty of collusive conduct in violation of Section 3(3)(d) read with Section 3(1) of the Act. It is more than evident from the record that in response to tender notice dated 25.06.2011, GSK had given bid for 1,00,000 doses of QMMV @ Rs.3000.90 per 10 doses vial and Sanofi had given bid for supply of 90,000 doses @ Rs.2899/- per 10 doses vial. Both the appellants had given cogent explanation and produced voluminous records to show as to why they had given bids for limited quantity. Notwithstanding this, the DG observed that the appellants had quoted identical quantity at the same price. Not only this, he completely overlooked the detailed explanation given by Sanofi

for giving bid for only 90,000 doses of QMMV as against the tender inquiry for 1,82,125 doses as also the explanation given by GSK for non-participation in the first and second re-tenders. Sanofi had explained that it did not give bid for the entire quantity because in the previous years. It remained unsuccessful and had to destroy vaccine by incurring huge losses. GSK had explained that it was not plausible to import vaccine from Belgium, get the same tested at Kasauli, put stickers and do packaging in a short period of 11-12 days in response to the first re-tender and 2-3 days in response to the second re-tender. The explanations given by both the appellants were quite plausible but the DG discarded them apparently because he had pre-judged the issue and was determined to record a finding that the appellants had indulged in bid-rigging.

We also find that the aforesaid findings are based on the detailed discussion on the basis of the material that was placed on record. Since these findings are arrived at to reach the conclusion by the COMPAT, we are not inclined to interfere with the said order in these appeals as on the facts of this case no substantial question of law is involved.

The appeals are dismissed.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
AUGUST 10,2017

ITEM NO.7

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3525-3526/2017

COMPETITION COMMISSION OF INDIA

Appellant(s)

VERSUS

GLAXOSMITHKLIEN PHARMACEUTICALS LTD.
AND ORS. ETC

Respondent(s)

Date : 10-08-2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHANFor Appellant(s) Mr. P.S. Narasimha, Sr. Adv.
Mr. Dhruv Malik, Adv.
For M/s. Juris Corp., AORFor Respondent(s) Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Samir R. Gandhi, Adv.
Ms. Krithika Ramesh, Adv.
Ms. Simran Bhat, Adv.
Mr. Mayank Pandey, AORMs. Sonia Mathur, Adv.
Mr. Abhishek Chauhan, Adv.
Mr. Sushil Kumar Dubey, Adv.
Ms. Sonam Mathur, Adv.
Mr. Satya Mitra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

(ASHWANI KUMAR)
COURT MASTER(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)