

**Shree Gajanana Motor Transport Company Limited v. Karnataka State Road Transport Corporation and Ors. (MANU/CO/0016/2017)**

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**Decision Date:** 27.02.2017

**Key Words:** *abuse of dominance*

**Issue:** Whether the actions of state operated transport services amounts to abuse of dominant position.

**Rule:** Sec. 4(2)(a)(i) and Sec. 4(2)(b)(i) of the Competition Act 2002

In the present case the Informant has alleged abuse of dominant position under Sec. 4 against the OP's. OP1 and OP2 are State run – Road Transport Corporations. As per the existing scheme, the various routes in Karnataka are divided into monopoly and non-monopoly routes. In the former only the buses of the OP's can operate while in the latter even private operators like the informant are able to operate. The informant averred that the OP's by using a flexi rate scheme are charging lesser on the non-monopoly routes to undercut competition and are compensating by charging higher on the monopoly routes. Furthermore given that the Government has increased road taxes for private operators and have exempted the STC's of the same, the STC's are being given an unfair advantage. Thus it is alleged that there is a violation of Sec. 4(2)(a)(i) and Sec. 4(2)(b)(i) of the Act.

In light of the same the Commission delineated the relevant market as the market for provision of passenger road transportation services in Karnataka. At this point the Commission noted that the allegation of abuse of dominance are directed against both the OP's and given that the Act does not provide for collective dominance, the Commission decided to assess dominance of each of the OP's independently. Based on this the Commission came to the conclusion that OP-1 enjoyed a dominant position however OP-2 was not dominant.

However when it came deciding whether the flexi-rate scheme of OP-1 was abusive, the commission noted that the notification of the Government only stipulates maximum rates for fares and freights and there is no bar on operators to charge fares less than maximum fares stipulated. Therefore, in view of this there is nothing unfair about charging fares through a flexi

rate scheme. The Commission goes on to observe that the informant is required to match the price/rates charged by OP 1 and other players to operate in the market and given its small size it is not being able to do so. And given that the scale of operation and efficiency of OP 1 is high and hence it is able to offer its services for a less fare, the same cannot be considered as an anti-thesis of competition. Thus the commission held that there is not violation of Sec. 4 since it is not based on sound business/economic rationale.

Further it also held that there is nothing unfair about giving tax exemptions to OP 1 since the Government is duty bound to provide transportation to the people of the state.

In conclusion the Commission closed the case under Sec. 26(2) of the Act. However on a parting note, the Commission expressed its view that it would be appropriate in the larger public interest that the Government of Karnataka takes a fresh view regarding the aforesaid schemes/ decisions after inviting suggestions from various stakeholders.

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