

In re: Mr G Krishnamurthy v. Karnataka Film Chamber of Commerce (Case No 42 of 2017)

Decision Date: 30.08.2018

Keywords: *anti-competitive conduct; recidivism; restricting the market*

Issue: Whether there has been a contravention of the provisions of Section 3(1) and Section 3(3)(b) of the Act?

Rule: Sec. 27 of the Competition Act, 2002

This case had arisen from the information filed by Mr. G. Krishna Murthy (Informant) under *Section 19(1)(a)* of the Competition Act, 2002 against M/s Karnataka Film Chamber of Commerce (KFCC or OP-1), M/s Kannada Okkuta (OP-2), Mr. Jaggesh (OP-3), Mr. Vatal Nagraj (OP-4) and Mr. Sa. Ra. Govindu, President, KFCC, (OP-5), alleging contravention of the provisions of *Section 3* of the Act.

The case revolves around the film '*Sathyadev IPS*', which was being dubbed from Tamil to Kannada by the informant. He alleged that the OPs set up numerous roadblocks and hindrances for him besides threatening his technical workers and dubbing artists.

The Informant averred that the Ops were involved in acts of banning or interdicting production and release of dubbed content, and that such acts by the OPs were anti-competitive acts in contravention of the provisions of *Section 3* of the Act. The Informant, aggrieved by the anti-competitive activities of the OPs, approached the Commission to initiate inquiry against the OPs under the provisions of the Act. Besides, the Informant also sought interim relief in terms of restraining the OPs from hindering the release of another Tamil film '*Araambham*', which the Informant got dubbed into Kannada language and titled '*Dheera*'.

Based on all the material available on record and the oral submissions made by the parties, the Commission *prima facie* found merit in the allegations of the Informant and accordingly, passed an order under *Section 26(1)* of the Act, directed the Director General (hereinafter, the 'DG') to cause an investigation into the matter and submit a report.

Further, the Commission was also convinced that the Informant was able to make out a case for grant of interim relief under *Section 33* of the Act in his favour.

On a perusal of the Investigation Report and the replies/objections filed by the parties, the submissions made by them during the oral hearings and the other material on record, the Commission opined that the three issues required determination in this matter which will be analysed below.

Issue No. 1: Whether the OPs have acted in concert and created barriers against screening of dubbed cinema in the State of Karnataka and whether such actions on the part of the OPs amount to contravention of the provisions of Section 3(1) and Section 3(3)(b) of the Act?

The Commission was convinced that it was the collective action by all the OPs, that led to severe impact on the Informant's film and each of the OPs played their part in thwarting the screening of dubbed movies in the State of Karnataka, much to the detriment of the principles of competition. This could be understood as an agreement between the OPs.

The Commission found that the aforesaid agreement resulted in appreciable adverse effect on competition (AAEC) in terms of *Section 19(3)(a)* and *Section 19(3)(c)* of the Act as it created barriers for new entrants in the market, as well as foreclosure of competition in the market.

The Commission observed that all the OPs collectively indulged in conduct/practices, that led to restriction on the exhibition of dubbed Kannada movies/content in the State of Karnataka which amounts to contravention of the provisions of *Section 3(1)* of the Act, in as much as the concerted acts of the OPs have resulted in AAEC in respect of the market for dubbed movies in the State of Karnataka. The examination of the factors under *Section 19(3)* of the Act brings out strong presence of AAEC.

The Commission, hence, finds that the agreement between the OPs, the practices adopted and decisions taken by them, in furtherance of such agreement, amply demonstrate the anti-competitive nature of such conducts, which are violative of the provisions of *Section 3(1)* of the Act. Further these acts are also in contravention of *Section 3(3)(b)* of the Act, in as much as they have resulted in limiting and restricting the market for dubbed cinemas in the state of Karnataka, to the detriment of producers of dubbed cinema, dubbing artists and also the consumers, who have been deprived of viewing such cinema, in their local language.

Issue No. 2: If Issue No.1 is answered in affirmative against OP-1 (KFCC), whether OP-1 indulged in recidivism by continuing to violate the provisions of Section 3 of the Act in spite of previous order of the Commission passed in Case No. 58 of 2012?

The Commission held OP-1 guilty for recidivism for continuing the anti-competitive conduct, despite strict and unambiguous order of the Commission to cease and desist from such anti-competitive conduct thereby making itself liable for action under *Section 42* of the Act.

Issue No. 3: If Issue No.1 is answered in affirmative, whether the persons, who at the time of such contravention, were in-charge of and responsible for the conduct of OP-1 and OP-2 are liable in terms of provisions of Section 48 of the Act?

The Commission found OP-5 and OP-4 liable under *Section 48(1)* as well as *Section 48(2)* of the Act, for the contravention of *Section 3* of the Act by OP-1, notwithstanding that they was also liable under *Section 27* of the Act, for their conduct.

In view of the aforesaid findings, the Commission directed the OPs, and members of OP-1 and OP-2 to cease and desist from indulging in practices which were found to be anti-competitive in terms of the provisions of *Section 3(1)* and *Section 3(3)(b)* of the Act.

Resultantly, penalty of Rs.9,72,943/-calculated @ 10% of the average income of OP-1 was imposed on it. Further, penalty of Rs.15,121/- and Rs.2,71,286/- calculated @ 10% of the average income of OP-5 and OP-3, respectively, was imposed on them.

Due to unavailability of bank information, the Commission stated that a separate order regarding penalty would have to be passed in respect of these OPs in due course.