

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Competition Appeal (AT) No. 96 of 2018

[Arising out of Order dated 30th August, 2018 passed by the
Competition of India, New Delhi in Case No. 42 of 2017]

IN THE MATTER OF:

Karnataka Film Chamber of Commerce (KFCC)
No. 28 Crescent Road
Bengaluru – 560001
Karnataka

Name Mr. Sunderraju
S/o Late Mr. Rajanna
Age 52 Years
Karnataka Film Chamber of Commerce (KFCC)
No. 28, 1st Main Crescent Road
Bangalore – 560001
Karnataka

...Appellant

Versus

- 1. Competition Commission of India**
18-20 Kasturba Gandhi Marg
New Delhi – 110001**...Respondent No.1**
- 2. Mr. G. Krishanamurthy (Informant)**
29/1, 10th Cross Street
Chandra Layout, Vijayanagar,
Bangalore – 560 040**...Respondent No.2**
- 3. Kannada Okkuta**
329, 2nd Cross, 2nd Main
2nd Stage, 2nd Block
RMV Layout
Bangalore – 560 094**...Respondent No.3**
- 4. Mr. Jaggesh**
No. 106/32, 10th Main Road
12th Cross, Malleshwaram
Bangalore – 560 003**...Respondent No.4**
- 5. Vatal Nagaraj**
329, 2nd Cross, 2nd Main Road
2nd Stage, 2nd Block

**RMV Layout
Bangalore – 560 094**

...Respondent No.5

**6. SA. Ra. Govindhu
28, Crescent Road
Bangalore – 560 001
Karnataka**

...Respondent No.6

Present:

For Appellant : Ms. Aakanksha Kaul, Mr. Manek Singh, Mr. Aman Sahani and Ms. Divita Dutta, Advocates

**For Respondents : Mr. Davander Prasad, Dy. Director (Law)
Mr. Mayank Bansal, Advocate for R-1
Mr. Aniruddha Deshmukh, Advocate for R-2**

J U D G M E N T

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The Present Appeal is filed under sub-section (1) and (2) of Section 53B of the Competition Act, 2002 (“the Act”) against the order dated 30.08.2018 passed by the Competition of India, New Delhi in Case No. 42 of 2017, whereby the Commission inter-alia found that the Appellant had engaged in anti-competitive practices in violation of Section 3(1) and 3(3)(b) of the Act and imposed a penalty of Rs.9,72,943/- on the Appellant.

Brief Facts:

Appellant’s Submissions:

2. The Learned Counsel for the Appellant submitted that aggrieved by the order of the Commission dated 30.08.2018 whereby the Commission imposed penalty of Rs.9,72,943/- on the Appellant, the present appeal is filed on the grounds and reasons as mentioned in the appeal. It is submitted that the allegation made by the 2nd Respondent who is an Informant with

regard to the activities that purportedly caused by the Appellant and other opposite parties, which according to the Informant directly amounts to anti-competitive as per Section 3 of Chapter-II of the Competition Act, 2002. However, the Learned Counsel submitted that the 2nd Respondent / Informant failed to establish the case against the Appellant, however, the Commission passed the impugned order, without any reasons, thus, the impugned order is under challenged in this Appeal. The Learned Counsel submitted the brief facts of the case.

3. It is submitted that the Appellant is a society registered under the Mysore Societies Registration on 26.08.1944 established with the main objective to promote the film industry in the State of Karnataka consisting the producers, distributors, and exhibitors as its members. It also aims to protect and conserve literature and culture of native languages such as Konkani, Tulu and Kodava along with Kannada as these languages are distinct and spoken only in the State of Karnataka also having their origin in Karnataka. The Appellant is also established with object to protect the welfare of its members and assist them in obtaining various facilities accorded by the Govt. of Karnataka.

4. The present dispute arises out of the information filed by Mr. G. Krishnamurthy ('the Informant') 2nd Respondent herein under Section 19(1)(a) of the Competition Act, 2002 claiming to be a producer of films involved in the movie production and distribution and related activities and also being a former member of the Appellant. The 2nd Respondent (Informant) Mr. G. Krishnamurthy alleged that he had entered into an

agreement with M/s Sairam Creations for a total consideration of Rs.7,00,000/- for purchasing the dubbing rights of a Tamil film (Yennai Arindhal) into Kannada Language titled “Sathyadev IPS”. The case of the 2nd Respondent is that from the beginning/time of the dubbing process till the release of the movie, he suffered numerous road blocks and hinderances because of the actions of the Appellant and Respondents No.3 to 6 (hereinafter also referred to as “Opposite Parties”).

5. The Hon’ble Commission passed an order dated 14.09.2017 under Section 26(1) of the Act directing the Director General to cause investigation into the allegation made by the Informant. The DG after investigation into the subject matter submitted its report dated 10.04.2018. Based on the DG’s report, the CCI passed the impugned order dated 30.08.2018 holding the Appellant and the other opposite parties OP’s 2 to 5 i.e. Respondents No. 3 to 6 herein, guilty of anti-competitive practices.

6. The impugned order fails to appreciate that there is neither any appreciable adverse effect on competition, nor any evidence of any concerned or collusive act by the Appellants. It is submitted that there is no evidence of any concerted or collusive act by the Appellant and their historic conduct is distinctly different from the present lis.

7. The impugned order is liable to be set aside for ignoring the relevant turnover and considering the total turnover of Appellant, thereby being contrary to the judgment of the Hon’ble Supreme Court of India in Excel Crop. Care Limited V. Competition Commission of India and Ors., (2017) 8

SCC 47. It is submitted that the activities of the appellant, coordination, cooperation and coexistence in the film industry in a peaceful manner with no profit motive. Therefore, the Appellant Chamber will have to terminate employees and possibly close down its activities.

8. It is submitted that the impugned order and the DG's report, both prima-facie lack of evidence (documentary, oral, electronic) and therefore are unsustainable in the eyes of law. In fact, there is no evidence, primary or secondary which affixes the Appellant's anti-competitive conduct in the present matter nor does the evidence on record even corroborate the liability or the culpability of the Appellant.

9. The impugned order and the DG report completely ignored the fact that the present complaint lodged by the Informant Mr. G. Krishnamurthy, Respondent No.2 herein is nothing but a gross abuse of process of law. The said informant had already filed civil suits against the appellant, out of personal grudge ill will and ego disputes, before the original side trial courts in Karnataka. The present complaint given by the 2nd Respondent is an attempt by him to convert a private grudge/dispute between him and the other opposite parties into a dispute under public law (competition law), thereby wasting the time of public authorities, with an evil intention to settle personal scores. Therefore, such matters ought to have been dismissed or rejected by the commission with exemplary cost.

10. It is submitted that the Learned Commission has erred gravely by overlooking such evidence, which error has led to miscarriage of justice and renders the impugned order unsustainable and liable to be set aside.

11. The Learned Counsel further submitted that there is no evidence to show that the Appellant had any agreement with the other opposite parties as defined in Section 2(b) of the Act. The only evidence of the Appellant being involved “Agreement” with the other opposite parties is the participation of its President in a press meet and a line in the statement of two witnesses. The said evidence does not adequately establish any agreement between the Appellant and the opposite parties, which limits or controls production, supply, market, technical development, investment or provision of services.

12. It is submitted that Section 3(3)(b) of the Act to be made applicable, the agreement must also be between persons, enterprises, associations “engaged identical or similar trade of goods or provision of services”. The Appellant does not produce or distributes film. It is merely a society that works towards the welfare of those employed in the film making industry in Karnataka.

13. In view of the reasons as stated above the Learned Counsel prayed this Bench to allow the appeal and set aside the impugned order.

Respondent’s Submissions:

14. The 2nd Respondent filed written submissions and the Learned Counsel for this Respondent, admitted the fact that he filed an information before the Commission alleging that the acts of Appellant and other Respondents/Opposite Parties therein, who were acting in concert led to imposition of a limit or a control upon the market of dubbed films in the State of Karnataka. The Appellant restricted the market by its actions and

now cannot contend that the market for dubbed films does not exist. It is submitted that the Appellant violated the provisions of Section 3 of the Act and by mere dis-association cannot absolve itself of the same. The Learned Counsel submitted that there is ample evidence to show from the DG's report and the Commission's order that the Appellant contravened the provisions of Section 3 of the Act and the Commission's order is in accordance with law. Hence the Learned Counsel prayed this Tribunal to dismiss the Appeal.

Analysis / Appraisal:

15. Heard the Learned Counsel for the respective parties, perused the pleadings, documents and relevant citations.

16. For better appreciation we need to show the parties arrayed before this Tribunal and the Commission/ 1st Respondent.

Sl. No.	Before NCLAT	Before Commission
a)	1 st Respondent (CCI)	Nil
b)	2 nd Respondent (Mr. G. Krishnamurthy)	Informant
c)	Appellant (Karnataka Film Chamber of Commerce (KFCC))	Opposite Party (OP) No.1
d)	3 rd Respondent (Kannada Okkuta)	Opposite Party (OP) No.2
e)	4 th Respondent (Mr. Jaggesh)	Opposite Party (OP) No.3
f)	5 th Respondent (Mr. Vatal Nagaraj)	Opposite Party (OP) No.4
g)	6 th Respondent (SA.Ra. Govindhu)	Opposite Party (OP) No.5

17. The 1st Respondent passed the order dated 30.08.2018 on the basis of information filed by the 2nd Respondent herein under Section 19(1)(a) of

the Competition Act, 2002 (in short “The Act”) against the Appellant and the other Opposite Parties alleging contravention of the provisions of Section 3 of the Act. The 2nd Respondent a former Member of the Appellant is a Producer of films and is involved in the business of movie production, distribution and related activities.

18. The 2nd Respondent vide agreement dated 03.05.2016 acquired dubbing rights from M/s Sairaam Creations of a Tamil film “Ynnai Arindhal” and started dubbing the film from Tamil to Kannada Language and titled it “Sathyadev IPS”. The grievance of the 2nd Respondent is that the Appellant and other Respondents / Opposite Parties since the very beginning created numerous hindrances and threatened his technical workers and dubbing artist in order to road block the movie to be dubbed in Kannada. However, the Respondent managed to complete the film and obtained certificate from the Central Board of Film Certificate (in short “CBFC”), Chennai vide Certificate dated 06.02.2017 and accordingly, the Informant became entitled to distribute, release and exhibit the movie ‘Sathyadev IPS’.

19. It is a fact that the Respondent entered into an arrangement with various distributors and exhibitors for the release of the said film on 03.03.2017 and it is the contention of the Respondent he spent huge money to ensure wide publicity of the film on print, publication/newspaper campaign from 26.02.2017 to 03.03.2017. The Respondent decided to release the film in 22 districts / towns of Karnataka on 03.03.2017. The 2nd Respondent alleged that during 26.02.2017 to 04.03.2017 during the campaign, the 4th Respondent published / tweeted a number of posts on his

twitter account containing veiled threats to commit acts of violence, if the said film of the Respondent released in theatres. The Respondent served a legal notice on 03.03.2017 on 4th Respondent. Further, the 5th Respondent also launched an exclusive media coverage including press meet stating that if the said movie were to be released then he would burn the theatres and even go to the jail and he led a protest along with members of Respondent No.3.

20. The Respondent also filed a suit bearing O.S. No. 1695 of 2017 before the City Civil Court, Bengaluru seeking for an injunction against the 4th Respondent from using social media or other means to defame the Respondents or his movie. The Civil Court granted an ex-parte injunction on 09.03.2017 restraining the Defendants from making defamatory comments through any form of social media.

21. The 1st Respondent after receipt of information passed an order dated 14.09.2017 under Section 26(1) of the Act directed the Director General (in short “DG”) to cause investigation into the allegation made by the Informant. The DG conducted investigation and submitted its report dated 10.04.2018 and the 1st Respondent after hearing the parties passed the order. The bone of contention of the 2nd Respondent that the Appellant and the Respondents No.3 to 6 and the Opposite Parties contravened the provisions of Section 3 of the Act.

22. The DG after its investigation found that the Appellant and the 3rd Respondent provided the necessary platform as an Association to their key

office bearers i.e. the 5th and 6th Respondents along with 4th Respondent to issue statements during the press meet on 01.03.2017 at Press Club, Bengaluru. It is also found that the such statements instigated the sentiments of the public. Even the 5th Respondent stated to torch the theatres which were screening the dubbed movie and the 4th Respondent supported the cause by his inflammatory tweets. The You Tube videos, news reports and media coverage of the protest created a negative and threatening atmosphere for the exhibition of the Respondents movie. Further the report of the DG states that the act of vandalism has been confirmed from the statements of the distributors viz. Devraj Aralikatti, the 4th and 5th Respondents and few other participants who attended the press meet such as Mr. Maddanhalli Shivanna Ramesh, Mr. Rangayna Raghu, Mr. Sadhu Kokila and Mr. J.K. Srinivasa Murthy. The observation of the DG such as anti-dubbing campaign prevented the screening of the movie “Sathyadev IPS” and caused huge financial loss to the Respondents.

23. The 1st Respondent after detailed perusal of the investigation report and the evidences led by the Investigating Authority, come to the finding that there is sufficient circumstantial evidence to suggest that the press meet was used as a platform to give coverage to the protest by the Opposite Parties. The Commission also observed that there was a meeting of minds amongst the Opposite Parties and their actions were aimed at the common cause of preventing release of dubbed movies in the State of Karnataka including the 2nd Respondents film “Sathyadev IPS”. Further, the Commission observed that the Opposite Parties have done the above acts,

with the sole object of ensuring that dubbed movies from other languages do not post any competition to Kannada movies, screened in the state of Karnataka and thereby the tacit agreement and decision taken by the Opposite Parties (OPs) by organising press meets, issuing threats and creating all kind of hindrances. The Commission further observed that anti-competitive conduct has resulted in limiting production and supply of dubbed movies and their screening within the State of Karnataka, which directly hits the provisions of Section 3(1) read with Section 3(3)(b) of the Act and resulted in appreciable adverse effect on competition, which the Opposite Parties have not been able to negate in any manner.

24. Further, this Tribunal gone through the statements given by the Opposite Parties before the DG.

25. The 5th Respondent admitted having organised the press meet as a protest against the dubbed content, which was attended by the 4th Respondent and other veterans of Kannada film industry apart from Shri H. Shivaram, Honorary Secretary of Respondent No.3. Further, the 5th Respondent claimed immunity for himself for the actions against the agitators. It is clinching evidence from the tweet of the 4th Respondent which published in the newspaper dated 02.03.2017 whereby it was tweeted that he will burn down the theatres in case dubbed cinemas are released. The content of the tweet thus read as under:

“I have gone through the newspaper cutting and want to state that this tweet was an emotional outburst on account of my long-held belief against dubbed cinemas and it was not

directed towards one cinema. What I have said is that I will commit self-immolation before the theatres, if these movies played, all this was an emotional outburst.”

26. The 1st Respondent vide order dated 27.07.2016 directed the Appellant to cease and desist from practices restricting dubbed cinema in the State of Karnataka. The said order attained finality and the Appellant and other members are bound by the said order. However, the Opposite Parties deliberately disobeyed the said order.

27. The 6th Respondent admitted participating in the press meet organised by the 5th Respondent. Further, from the depositions of 4th Respondent and others, it is clear that the press meet was jointly organised by the Appellant, the 3rd Respondent, 5th Respondent and 6th Respondent. Further, it is evident that the purpose of organizing the press meet was to send a strong message threatening the distributors / sellers and theatres owners intending to watch / screen the dubbed cinemas. There is ample evidence to show that the Opposite Parties foreclosed competition by not allowing the 2nd Respondent to exhibit / screen his dubbed movie in the State of Karnataka through issue of various press statements, twitter posts, news reports, protest rallies, threats against allowing to exhibit / screen the dubbed movie thereby harmed competition.

28. As stated (supra), it is on record that the 4th Respondent posted incendiary posts from his twitter containing thinly veiled threats and instigating the public and calling upon them to stop the dubbed movie from screening. On 01.03.2017 a press meet was organised by the Opposite

Parties for the purpose of protesting against the release of dubbed movie “Sathyadev IPS” at Press Club, Bengaluru.

29. From the evidence on record, it establishes that the alleged anti-competitive conduct on the part of the Opposite Parties comprised of tweets, YouTube videos, press meet and protest rallies etc.

30. The Commission examined the evidences recorded by the DG in the investigation report and from the investigation and the from the examination of the Opposite Parties, there is clear evidence that the Opposite Parties i.e. Respondents No. 3 to 6 have mainly caused hindrances even before and after release of movie of the 2nd Respondent. It is seen that the press meet held on 01.03.2017 is a crucial and the whole chain of events took place before and after the release of the film. The evidences with regard to tweets Youtube video, press meets have been obtained from the public domain and accompanies by Certificate under Section 65(B) of the Indian Evidence Act, 1872 read with the provisions of Information Technology Act, 2000 in respect of electronics evidences. The veracity of the contents of the same has not been questioned by any of the partis and therefore, the same was relied upon, and assumes cognizable evidence in the eye of law.

31. Even from the perusal of the statements of various witnesses who participated in the said press meets which brings out the role of the Appellant and the 6th Respondent in calling the press meet. The relevant part of the statements of Mr. Rangayna Raghu (Actor), Mr. Sadhu Kokila

(Actor/Singer/Producer/ Director) and Mr. J.K. Srinivas Murthy (Actor/Producer/Director) respectively are reproduced hereunder:

“Statement of Mr. Rangayna Raghu

“Ques. 2 You are being shown a YouTube video of the press meet held at Press Club, Bangalore, on 01.03.2017. Who has arranged this press meet and who were the other members who have addressed the press with regard to release of dubbed movie “Sathyadev IPS”?

Ans. 2 The press meet was called by Mr Vatal Nagraj and Mr. Sa Ra Govindu....”

“Statement of Mr. Sadhu Kokola

“Ques. 2 You are being shown a YouTube video of the press meet held a Press Club, Bangalore, on 01.03.2017. Who has arranged this press meet and ...?

Ans. 2 The press meet was organised by KFCC....”

“Statement of Mr. Srinivasa Murthy

“Ques. 2 You are being shown a YouTube video of the press meet held a Press Club, Bangalore, on 01.03.2017. Who has arranged this press meet and...?

Ans. 2 The Press meet was organised by KFCC Sa ra Govindu and Mr Vatal Nagraj, as a member of KFCC I have participated in the press meet. The press meet was against dubbed Cinema and not any specific movie. If dubbed movie is allowed the artists will become jobless.”

32. The 1st Respondent herein, find evidence against the Appellant and the 6th Respondent and observed that it has played a significant role in the organization of the press meet and the participation of the 6th Respondent cannot be said to be in his personal capacity and observed that he was the President of the Appellant during the relevant period of time. The commission also takes note the contents in the press meet held on 01.03.2017, wherein the opposite parties participated and actively advocated the cause of condemning dubbed Kannada Films. Further, the commission observed that the press meet was used as a platform to give coverage to the protest by the opposite parties. One of the contentions of the Appellant is that the cause of the Appellant is to promote Kannada literature and to ensure livelihood of artists in Kannada film industries and not otherwise. However, from the sequence of events and from the evidences on the record that the conduct of the Appellant and the opposite parties is anti-competitive thus, resulted in limiting production and supply of dubbed movies and their screening within the State of Karnataka which directly hits the provisions of Section 3(1) read with Section 3(3)(b) of the Act.

33. It is apt to note that in similar circumstances, the commission i.e. the 1st Respondent herein, passed an order dated 27.05.2015 in case No. 58/2012 relating to the anti-competitive conduct of the opposite parties and the opposite parties are aware of the said order. The commission in its order dated 27.07.2015 at para 7.20 and 7.21 observed as under:

“7.20 The associations have followed the practice of restricting the screening/broadcasting of dubbed versions of contents. This practice is being followed for the last 50 years

and no dubbed film in the past has been successfully released in Karnataka. The Ops not only restrict the production and exhibition of dubbed contents but also have been found to impose conditions like number of screens for Kannada or other language films and number of shows on the other language films. Similarly on TV, Kannada channels are told not to telecast other language contents. The Opposite Parties also impose restrictions like minimum number of hours for Kannada language programs.

7.21 The DG investigation has not shown that the Government of India or the State Government has banned the telecast of dubbed version in India or in Karnataka. Most importantly, the viewers/consumers are not forced to watch any dubbed contents. It is the discretion of the viewer to exercise her choice as to which programme she wants to watch. She has to pay for the programmes she wants to watch as most of the entertainment programmes on TV are not available free of cost. Therefore, it is the viewer who should have the choice to watch a dubbed programme or original language programme or any other programme. Trade associations such as OP-1 and OP-2 cannot become the self-appointed guardians of local language and culture and interfere with the market forces. In view of the foregoing discussion, the Commission agrees with the DG that the justification offered by OP-1 and OP-2 is liable to be rejected.”

34. Against the above order of the Commission dated 27.07.2015, the State of Karnataka including the Appellant filed an Appeal before the Appellate Forum challenging the said order, however, the Appellate Tribunal dismissed the said appeal filed by the Appellant on merits on 10.04.2017. Against the said dismissal of the Appeal, an Appeal was filed before the

Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the said appeal at the stage of admission itself. Accordingly, the order of the 1st Respondent dated 27.07.2015 attained finality and the observations made therein in preceding paras are hold good and the said order binds on the Appellant and the Opposite Parties. Thus, the Appellant and the Opposite Parties must comply the order scrupulously and cannot deliberately disobey the said directions.

35. After analysing the pleadings, this Tribunal is of the view that the order passed by the 1st Respondent dealt all the issues including the evidences led by the Director General and other evidence by the Commission itself. Having dealt the issues meticulously on the basis of the evidence on record, this Tribunal find that there is ample evidence to suggest the existence of anti-competitive conduct by the Appellant and the Opposite Parties. Accordingly, this Tribunal prima-facie holds that the DG and the Commission relied upon the material evidence and comes to a definite conclusion that the Appellant and the Opposite Parties indulge in anti-competitive conduct in violations of the provisions of Section 3 of the Act.

36. Further, the Commission also clearly observed that all the Opposite Parties had a unity of cause and there was meeting of minds and all the acts were done in concert and in a well-planned manner to ensure that harm is caused to dubbed movies, including the movie of the 2nd Respondent herein. This Tribunal is of the view that the act of the Appellant and the Opposite Parties is a deliberate one.

Conclusion:

37. Accordingly, this Tribunal finds and affirms the findings and the reasons/inference drawn against the Appellant and the Opposite Parties by the 1st Respondent/Commission and the same is ratified by holding the acts of the Appellant and the Opposite Parties is anti-competitive conduct which resulted in limiting production and supply of dubbed movies into Kannada language and their screening within the State of Karnataka, which directly hits the provisions of Section 3(1) read with Section 3(3)(b) of the Competition Act, 2002.

38. For the aforesaid reasons, this Tribunal comes to an inescapable and irresistible conclusion that the order passed by the 1st Respondent is in accordance with law and does not warrant any interference by this Tribunal. Resultantly, the Appeal sans merit and the same is dismissed. However, no order as to costs. Applications, if any, pending stand closed.

39. The interim order passed by this Tribunal dated 12.12.2018 stand vacated.

[Justice Rakesh Kumar]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

18th October, 2022

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