

COMPETITION COMMISSION OF INDIA

Case No. 9/2011

8th May, 2012

UTV Software Communications Ltd., Mumbai

Informant

Against

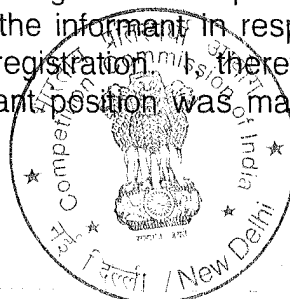
Motion Pictures Association, Delhi

Opposite Party

Order

The issue involved in this case is the same as in case No. 17/2011, Mrs. Manju Tharad, Proprietress, M/s. Manoranjan Films, Kolkata v. Eastern India Motion Pictures Association, Kolkata and another. In my separate opinion in the above case, I had held that Associations like Opposite Party were enterprises within the meaning of section 2(h) of the Competition Act. Looking into the fact that Op herein was exclusively active within a particular geographical area and the product market was production, distribution and exhibition of films, Motion Pictures Association, Delhi was in a dominant position within the area of Delhi for the reasons stated by me in case No. 17/2011. I, therefore, hold that the Opposite Party, Motion Pictures Association, Delhi was an enterprise involved in economic activity within the relevant market of production, distribution and exhibition of films in the geographic market of Delhi and was in a dominant position within this market.

The facts disclosed by the informant and verified by the DG show that the OP abused its dominant position by compelling the informant to submit a fresh form where the abusive provisions were not scored off as earlier done by the informant. The informant had earlier, along with a letter filled the registration form for its film 'No One Killed Jessica' but struck off abusive clauses. The form was returned to the informant by OP with a letter dated 12th January, 2011 and he was asked to fill up the registration form afresh without scoring off the abusive clauses. OP also directed the informant to pay the penalty. Similar conduct was shown by the OP in respect of informant's film Dhobi Ghat and subsequent film Saat Khoon Maaf. It is, therefore, apparent that the OP, in gross abuse of its dominant position was imposing anti competitive terms & conditions as enumerated by DG on the informant in respect of all the films for which the informant sought registration. Therefore, consider that a clear case of abuse of dominant position was made out in this



case and the informant had violated section 4 of the Competition Act and was liable for punishment under section 27 of the Competition Act.

As held by me in case No. 17/2011 that the formation of an association and subscribing to its Memorandum of Association by the members amounted to entering into an agreement inter se between the members. In this case also I hold that the Memorandum of Association of OP constituted an agreement among the different members of the Association and the different clauses in the Memorandum of Association, rules & regulations & practices which contravene the provisions of Section 3 of the Competition Act are to be held as void. The following clauses, rules & regulations and the conduct of the Motion Pictures Association, Delhi contravened the provisions of section 3 of the Competition and are declared as anti competitive and void. These clauses, rules, regulations shall be treated as non-existent in the Memorandum of Association/bye laws/rules and practices of the OP and shall not be binding on the members :-

- 1) Para 14(x) and 16 of Memorandum of Articles of Association of OP which prohibits dealing with the non-members;
- 2) Rule 16(1) of Articles of Association which provides for compulsory registration of films with the Association and provides that no film/movie shall be obtained/supplied by the members to a non-member.
- 3) Provisions in articles of Association or Rules imposing penalty on members for violating the above 2 provisions;
- 4) Imposing a time limit of 10 years for agreement between producers and distributors;
- 5) Pressurizing Producers/distributors of films for payment of dues to the members; and
- 6) Issuing circulars to the members signaling boycott of the films.

The Association shall issue letters to all the members informing about the declaration of aforesaid clauses/rules/practices as void and that the members are not bound by these clauses within 30 days of the receipt of this order.

Penalty

Section 27 calls for imposition of penalty on an enterprise who is found to indulge in violation of section 3 or 4. OP herein and similar other associations claim themselves to be non profit motive associations and most of them are registered as section 25 companies. Section 27 of the Competition Act gives discretion to the Commission that it may impose such penalty as it deems fit on an enterprise which violates section 3 and 4 of the Competition Act. However, an upper limit of the




penalty has been fixed by the Competition Act and it is provided that the penalty should not be more than 10% of the average turn over for the last three preceding financial years.

The issue arises whether a penalty can be imposed on an Association or on a section 25 company, constituted by different enterprises for mutual benefit as in the case like this. The different associations of this nature in different geographic areas of India claim to be non profit motive organizations but indulge into total economic activities. I consider that merely because a number of profit earning commercial enterprises form an Association or a section 25 company, the Association cannot escape the penal provisions when it is formed to indulge into anti competitive activities by way of price fixation, cartelization or imposing penalties on the members who do not abide by their anti competitive directions, on the ground that it had no turn over. The appropriate mode of assessing the turn over of an Association for the purpose of imposing penalty is the collective turnover of all the enterprises who are members of such an association. All the members of such Association are business enterprises and are liable to be penalized for their collective anti competitive action, whether this collective anti competitive action is taken in the name of the association or in the name of a trust or cartel or in any other form. The Commission under such circumstances has power to impose an appropriate penalty and the upper limit in such cases would be the total turnover of all the enterprises and not of the association or of section 25 company registered as a non profit association and in the name of turn over has no turnover or very nominal turnover.

I therefore, consider that in this case, the appropriate penalty would be Rs.10 crores. I, therefore, impose a penalty of Rs.10 crores on OP for contravention of section 4 of the Competition Act. The OP Association is directed to deposit this penalty amount within 60 days. However, in the case the OP Association fails to deposit this penalty, the members of the Association collectively shall be liable to deposit this penalty and the penalty would be recoverable from them as permitted under the law.

Certified True Copy



S. P. GAHLAUT
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Competition Commission of India
New Delhi

Sd/-
Member (D)