



COMPETITION COMMISSION OF INDIA

Case No. 64 of 2016

In re:

Mr. N. K. Prakash Babu

HMT Cinema, Bengaluru – 560013, Karnataka

Informant

And

- 1. The President, South Indian Film Chamber of Commerce
605, Anna Salai, Cathedral P.O.,
Chennai – 600006, Tamil Nadu** **Opposite Party No. 1**
- 2. The Secretary, South Indian Film Chamber of Commerce
605, Anna Salai, Cathedral P.O.,
Chennai - 600006, Tamil Nadu** **Opposite Party No. 2**
- 3. The President, Kerala Film Chamber of Commerce
Mahatma Gandhi Road,
Ernakulam, Kochi, Kerala - 682035** **Opposite Party No. 3**
- 4. The Secretary, Kerala Film Chamber of Commerce
Mahatma Gandhi Road,
Ernakulam, Kochi, Kerala - 682035** **Opposite Party No. 4**
- 5. The President, Kerala Film Producers Association
Mahatma Gandhi Road,
Ernakulam, Kochi, Kerala - 682035** **Opposite Party No. 5**
- 6. The Secretary, Kerala Film Producers Association
Mahatma Gandhi Road,
Ernakulam, Kochi, Kerala - 682035** **Opposite Party No. 6**



7. **The President, Kerala Film Distributors Association**
Pullepady Road, Pullepady,
Ernakulam, Kochi, Kerala - 682035 **Opposite Party No. 7**
8. **The Secretary, Kerala Film Distributors Association**
Pullepady Road, Pullepady,
Ernakulam, Kochi, Kerala - 682035 **Opposite Party No. 8**

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Justice G. P. Mittal
Member

Order under Section 26(2) of the Competition Act, 2002

1. Mr. N. K. Prakash Babu (**‘Informant’**) has filed the information in the present case under Section 19(1)(a) of the Competition Act, 2002 (the **‘Act’**) against the President, South Indian Chamber of Commerce (**‘OP 1’**); the Secretary, South Indian Film Chamber of Commerce (**‘OP 2’**); the President, Kerala Film Chamber of Commerce (**‘OP 3’**); the Secretary, Kerala Film Chamber of



Commerce(‘OP 4’); the President, Kerala Film Producers Association (‘OP 5’); the Secretary, Kerala Film Producers Association (‘OP 6’); the President, Kerala Film Distributors Association (‘OP 7’); and the Secretary, Kerala Film Distributors Association (‘OP 8’) alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.

2. As per the information, the Informant is a leaseholder of HMT Cinemas (‘**theatre**’) situated in the City of Bengaluru, Karnataka. HMT Cinemas is stated to be the only theatre in Karnataka having all amenities including 4K Sony Film Projector along with 7.1 Dolby Digital Sound Facilities. OP 1 and OP 2 are the office bearers of South Indian Film Chamber of Commerce which is working for the welfare of regional film industry in southern India. OP 3 and OP 4 are the office-bearer of Kerala Film Chambers of Commerce which is a society comprising of the producers, distributors and exhibitors in the Malayalam film industry and its main role is to pursue the government for enacting laws/ rules in favour of the Malayalam film industry. OP 5 and OP 6 are the office-bearers of Kerala Film Producers Association which is an association of film producers in the Malayalam film industry and it works to promote and protect the interest of Malayalam movie producers. OP 7 and OP 8 are the office bearers of Film Distributors Association, Kerala which works to protect the interests of distributors of Malayalam films.
3. The Informant has alleged that till 7th January, 2016 various Malayalam films were screened/ exhibited in his theatre but after 8th January, 2016, due to the pressure of OPs, the producers/ distributors of Malayalam films have stopped the supply of Malayalam films to him. On enquiry, it was revealed that OP 5 to OP 8 had orally instructed the producers/ distributors of Malayalam films to not supply the Malayalam films to the Informant. It is averred that the Informant has made representations to OPs for supply of Malayalam films to him like other theatres in Karnataka, but the OPs have not responded. The Informant had personally visited OP 5 and OP 6 to discuss about the said issue and during the meeting, OP 5 and OP 6 advised the Informant to submit an Affidavit in prescribed format with the undertaking that there will be no video



piracy of Malayalam films in his theatre. Accordingly, the Informant had submitted the Affidavit in the prescribed format and orally communicated the same to OP 1 to OP 4 with a request to resolve the issue expeditiously.

4. It is averred that since the Informant did not receive any positive reply from the OPs regarding supply of Malayalam films to him, he issued a legal notice dated 07.05.2016 to the OPs for their alleged anti-competitive and abusive conduct and demanded withdrawal of the ban of non-supply of Malayalam films to him within 15 days from the receipt of the notice. The Informant has alleged that the OPs have orally entered into an 'anti-competitive agreement' to not supply Malayalam films to him and have abused their dominant position by imposing unfair unilateral oral instructions on the producers/ distributors of Malayalam films to not supply Malayalam films to the Informant.
5. Based on the above allegations, the Informant has prayed the Commission to intervene appropriately for ensuring the availability of Malayalam films to his theatre at par with other theatres in Karnataka and restrict OPs from continuing the above said anti-competitive practice.
6. The Commission has perused the information and other materials available on record. It is observed that the Informant appears to be aggrieved by the conduct of OPs in restricting the producers/ distributors of Malayalam films to not supply Malayalam films to him.
7. Having perused the reply of OP 5 and OP 6 dated 1st June, 2016 in response to the legal notice of the Informant dated 07.05.2016, the Commission notes that it is the sole discretion of the individual producer/ distributor of a movie to engage theatres for exhibiting movies and Kerala Film Producers Association and its office bearers have no role and power to insist an individual producer/ distributor to release a particular movie in a particular theatre. It is also noted that there were incidents of illegal copying/ recording of the Malayalam films for piracy in the Informant's theatre. Further, from the reply of OP 7 and OP 8 dated 27th June, 2016 in response to the Informant's legal notice, the



Commission notes that OP 7 and OP 8 have no authority to direct the distributors/ producers to release or not to release any film in any particular theatre and OP 7 and OP 8 had not given any oral/ written directions to anyone regarding the distribution of Malayalam films in Bengaluru.

8. The Commission observes that the decision on screening/ releasing of a movie in any particular theatre is a business decision taken by an individual producer/ distributor considering its business interest. A film producer/ distributor who has invested a huge sum of money for creating the content of a film has every right to release its movie in the theatre of his choice as per its business strategy and it has every right to protect the movie content from illegal recording *i.e.* 'piracy'. In this regard, it may be noted that the Informant has given an Affidavit dated 8th April, 2016 to OP 5 and OP 6 wherein he had undertaken not to allow any video piracy of Malayalam movies released in his theatre. Para 2 of the said Affidavit may be noted:

"I am the Lessee of the HMT Cinema, Jalahalli, Bengaluru. I hereby undertake that there will be no Video Piracy of Malayalam Movies which will be playing in my theater...."

9. The Commission also observes that the Informant has been operating the said theatre since 19th September, 2009 and as per the information available in the public domain, on March, 2012, a criminal case was filed against the Informant by anti-piracy cell of Kerala Police for allowing piracy of the Malayalam movies. The same was reported by the '*Deccan Chronicle*' with the following observations:

"A Bangalore-based racket involving the piracy of new Malayalam movies has been busted by the state police anti-piracy cell. Three officials of the HMT Theatre in Bangalore city have been arrested in this connection."

10. It may be noted that there is a recent spurt in piracy activities of latest Malayalam movies such as '*Premam*', '*Loham*', '*Charlie*' and '*Theri*' and the same is affecting the business of Malayalam movies in India. The Commission



observes that piracy is one of the major issues in the entertainment industry in India. As per the first Bollywood-Hollywood collaborative study titled the 'Effects of Piracy and Counterfeiting on India's Entertainment Industry', piracy and counterfeiting activities are growing in the Indian entertainment industry and the industry is losing around Rs.16,240/- crore every year which is around 40% of potential revenues of the industry. Further, because of piracy around 820,000 people are losing job in the Indian entertainment industry.

11. The Commission further observes that the copyright law is there to protect not only the interests of authors or creators of original works, but also the interests of all 'chain of title' rights holders, including film distributors. The term 'chain of title' refers to the documented collection of assignments to the producer, special purpose entity (SPE), distributor or other entity that proves ownership of or distribution rights of a film. The right of the film producers/ exhibitors are protected under Section 3(5)(i)(a) of the Act which clearly states that application of Section 3 shall not restrict the right of any person to impose reasonable conditions as may be necessary for protecting any of its rights conferred upon him by the Copyright Act, 1957.

12. The Commission also notes para 4 of the legal notice dated 7th May, 2016 of the Informant wherein the Informant himself admitted that screening of Malayalam films has been entrusted to the Informant by the respective film producers and distributors. Para 4 of the said legal notice of the Informant states that:

'Our clients instruct us to state that, till 7th January 2016 various Malayalam Films were screening/ exhibiting in our client's theatre, such screenings are entrusted to our client by the respective film producers/ distributors.'

13. Furthermore, the Informant has not provided any material to substantiate the allegations that oral instructions were given by OPs to any of the producers/ distributors of Malayalam films to not supply Malayalam films to him.



14. In the light of the above analysis, the Commission finds that no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
15. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 05.12.2016