



**COMPETITION COMMISSION OF INDIA**

**Case No. 85 of 2016**

**In re:**

**Shree Gajanana Motor Transport Company Limited**

**N. T. Road, Mandli,**

**Shivamogga - 577202, Karnataka**

**Informant**

**And**

**1. Karnataka State Road Transport Corporation (KSRTC)**

**Central Office, K.H. Road,**

**Bengaluru, Karnataka**

**Opposite Party No. 1**

**2. North West Karnataka Road Transport Corporation (NWKRTC)**

**Central Office, Gokhul Road,**

**Hubbali, Karnataka**

**Opposite Party No. 2**

**CORAM**

**Mr. S. L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. U. C. Nahta**

**Member**

**Justice G. P. Mittal**

**Member**



**Appearances:**

**For Informant:** *Mr. Varun Kumar Chopra and Ms. Rajani Prasad, Advocates and Mr. Subhash Nayak, Executive Director.*

**For OP 1:** *Mr. Radhakrishna S. Hegde, Advocate and S. Manohar, Chief Law Officer, KSRTC.*

**For OP 2:** *Mr. Radhakrishna S. Hegde, Advocate.*

**For the Government of Karnataka:** *Mr. Joseph Aristotle S., Standing Counsel for the State of Karnataka; Mr. H. G. Kumar, Additional Commissioner of Transport, State of Karnataka and Mr. P. N. Ramanathan, Assistant Liaison Officer, Legal Cell, Karnataka Bhavan.*

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

1. The information in the present matter has been filed by Shree Gajanana Motor Transport Company Limited (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (the **'Act'**) against Karnataka State Road Transport Corporation (**'KSRTC'**/ **'OP 1'**) and North West Karnataka Road Transport Corporation (**'NWKRTC'**/ **'OP 2'**) [collectively hereinafter referred to as, the **'OPs'**] alleging contravention of the provisions of Section 4 of the Act.
2. The Informant is stated to be a public limited company engaged in the business of operating buses for passenger transport in various routes of Shivamogga, Chickmagalore, Davanagere, Karwar (North Karnataka), Udupi and Haveri districts of Karnataka. As per the information available in the



public domain, OP 1 was established in August, 1961 under the provisions of Road Transport Corporation Act, 1950 of Karnataka for providing passenger transportation services in the State of Karnataka. Upon bifurcation of OP 1, OP 2 was established in 1997 under the provisions of the Road Transport Corporation Act, 1950 to provide passenger transportation services in the northwestern part of Karnataka.

3. As per the Informant, the OPs have segmented the route between Bengaluru and Sirsi in Karnataka into monopoly and non-monopoly segments for operating passenger transportation buses. While the routes from Bengaluru to Shivamogga passing through Arsikere and Kaduru and from Sagar to Sirsi have been reserved as monopoly routes, the route between Shivamogga and Sagar has been dereserved as a non-monopoly route. It is stated that in the aforementioned monopoly routes, only the buses of the OPs are permitted to operate whereas in the non-monopoly route, the buses of both the OPs as well as private operators like the Informant are permitted to operate. Thus, in the entire route between Bengaluru and Sirsi, only a small segment between Shivamogga and Sagar, spanning a distance of 73 kms., is open for private bus operators to operate their buses along with the buses of the OPs.
4. The Informant has alleged that while abusing their dominant position, OPs are not allowing the private bus operators to operate their buses on the above mentioned monopoly routes. Further, with a view to curb competition, OP 1, through its 'flexi rate' scheme, is charging less fare from the commuters in the aforementioned non-monopoly route *vis-à-vis* the maximum rates of fares fixed/ notified by the Government of Karnataka *vide* notification dated 31.07.2013 in terms of Section 67(1) of the Motor Vehicles Act, 1988. It is stated that the fares notified by the Government of Karnataka are applicable on the buses operated by the OPs as well as the private bus operators.



5. It is averred that OP 1 is harassing the private bus operators including the Informant, through its 'flexi rate' scheme, by charging less fares from the commuters in the non-monopoly routes compared to the notified fares. On the other hand, in the monopoly routes, OP 1 is charging maximum fares from the commuters as per the aforesaid notification. To substantiate its allegations, the Informant has stated that as per the aforesaid notification, both the OPs and the private operators have to charge a fare of Rs. 69/- per passenger for covering a distance of 73 kms. between Sagar and Shivamogga but, in order to attract more passengers and to curb competition, OP 1 is charging Rs. 60/- per passenger for the said route which is less than the notified fare by Rs. 9/-. In contrast, OP 1 is charging a higher fare of Rs. 65/- per passenger in the monopoly route between Shivamogga and Kaduru for covering a lesser distance of 69 kms. Further, in case of another non-monopoly route *i.e.*, between Shivamogga and Chitradurga, for covering a distance of 110 kms., OP 1 is charging a lesser fare of Rs. 80/- per passenger whereas, it is charging a higher fare of Rs. 105/- per passenger for covering a similar distance between Shivamogga to Arsikere, which is a monopoly route. It is averred that with a view to wipe out competition in the non-monopoly routes, the OPs are not only charging lesser fares and charging maximum notified fares in the monopoly routes, but are also not operating their buses as per the approved time schedule. Resultantly, the private bus operators are incurring losses and the commuters are paying higher fares. Further, it is averred that since State Transport Corporations (STCs) are not operating their buses on the monopoly routes as per the approved time schedule, the commuters are forced to depend on private vehicles such as tumtums for their travel which are run by influential persons of the locality.
6. The Informant has also averred that STCs including the OPs are getting financial assistance from both the Central and State Governments for purchasing buses as well as for their repair and maintenance, whereas the private operators are not entitled for the same and they have to incur such



expenses by taking loans from the banks. It is stated that STCs pay taxes to the Government based on their collection of fares, whereas the private operators have to pay Rs. 999/- per seat quarterly as tax irrespective of their business income. The Government of Karnataka has also increased the road tax with respect to private buses to the extent of 50% from 01.04.2016; though STCs were granted concession for the same. North East Karnataka Road Transport Corporation (NEKRTC) and OP 2 have been exempted from paying tax to the State Government from 2012 to 2017 *vide* order no. SREO7SSB2010 (part 2) dated 06.11.2012 as well. STCs are getting reimbursement from the Government on account of concessions granted to different categories of passengers such as students, senior citizens, handicapped, freedom fighters, *etc.*, whereas private operators are not entitled for such reimbursements. Accordingly, it is alleged that, by taking shelter of the Government, the OPs are imposing unfair conditions on the private operators including the Informant and restricting or limiting the provision of services which is in contravention of the provisions of Section 4(2)(a)(i) and 4(2)(b)(i) of the Act.

7. On the basis of the above submissions, the Informant has prayed the Commission to initiate an investigation against the OPs, impose penalty on the OPs and pass such order(s) as the Commission may deem fit and appropriate in the facts and circumstances of the case.
8. The Commission has perused the information available on record and heard the counsels for the Informant, the OPs, and the State of Karnataka.
9. The Commission notes that the Informant is aggrieved by the alleged abuse of dominant position by the OPs in charging lesser fares from the passengers in the non-monopoly routes through its 'flexi rate' scheme and charging maximum fares from the passengers in the monopoly routes *vis-à-vis* the fares fixed by the Government of Karnataka *vide* its notification dated 31.07.2013.



It is the case of the Informant that with a view to drive out competitors, the OPs are indulging in the aforesaid anti-competitive practices. Further, the Informant has submitted that *vis-à-vis* the OPs, it is in a competitively disadvantageous position as they are getting a host of exemptions and other benefits from the Central and State Governments for their operations.

10. Since the allegations in the instant matter relate to contravention of the provisions of Section 4 of the Act, it is imperative to first delineate the relevant market before assessing the position of dominance of any of the OPs and examining their alleged conduct.
11. The Commission observes that the allegations of the Informant in the instant case relate to the difference in the fares charged by the OPs *vis-a-vis* the private bus operators in the State of Karnataka especially between Sagar and Shivamogga. It is observed that the services of passenger road transportation through buses cannot be considered as a substitute for other modes of passenger road transportation such as taxis, auto-rickshaws, *etc.* Even if other modes of passenger road transportation also provide similar services to the end users, there is considerable difference between the services of passenger road transportation through buses and other modes in terms of difference in prices and service characteristics. There is a dedicated category of passengers who avail the services of bus transportation and, under normal circumstances, they will not switch to other modes of passenger transportation. Considering the foregoing circumstances, the Commission is of the view that the services of passenger road transportation through buses constitutes a separate relevant product market. Accordingly, the Commission defines the relevant product market in the instant case as the market for “*provision of passenger road transportation services through buses*”.



12. With regard to the relevant geographic market, the Commission observes that the conditions of competition for the provision of services for passenger road transportation through buses is homogenous throughout the State of Karnataka and can be distinguished from the conditions prevailing in the neighbouring states of Karnataka. Further, except for inter-state operations, the OPs and the private bus operators are permitted to operate their buses and compete with each other on the various routes within the State of Karnataka. Accordingly, the relevant geographic market in this case may be considered as ‘*Karnataka*’.
13. In view of the relevant product market and the relevant geographical market defined *supra*, the relevant market in the instant case may be delineated as the market for “*provision of passenger road transportation services through buses in Karnataka*”.
14. It may be noted that the allegations of abuse of dominance in the instant case are directed against both the OPs. Since the Act does not provide for the concept of collective dominance, the Commission deems it appropriate to assess dominance of each of the OPs independently in the aforesaid relevant market. The Commission observes that the Informant has not provided any information on the dominance of any of the OPs in the relevant market as defined in the previous paragraph. However, based on the information available in the public domain, it is observed that in Karnataka, along with the OPs, two other STCs *viz.* Bengaluru Metropolitan Transport Corporation (BMTC) and NEKRTC, as well as many other private operators are providing passenger road transportation services through buses. The Commission observes that in terms of gross revenue, number of vehicles, scale of operation, staff strength, average traffic revenue per day, *etc.* OP 1 is ahead of all its competitors including the private operators in the relevant market. It is observed that, in the financial year 2014-15, the gross revenue of OP 1 was Rs. 3,19,681.93 lakh whereas in case of its nearest competitor BMTC, it was Rs. 2,25,684.43 lakh. As per the information available on their respective



websites, OP 1 has 8,348 buses whereas BMTC has 6,183 buses followed by NEKRTC with 4,343 buses and OP 2 with 4,440 buses. Further, OP 1 has Rs. 754.57 lakh average traffic revenue per day whereas it is Rs. 385 lakh in case of BMTC. In terms of staff strength, with 36,875 number of employees, OP 1 is on the top followed by BMTC with 34,786 number of employees and OP 2 with 22,226 number of employees. Furthermore, in terms of average service kms per day, OP 1 is on the top with 26.43 lakh kms followed by BMTC with 12.09 lakh kms and OP 2 with 15.50 lakh kms. Based on the above information, the Commission is of the view that OP 1 is dominant in the aforesaid relevant market. However, OP 2 cannot be said to be dominant.

15. Coming to the examination of the alleged abusive conduct of OP 1, at the outset, the Commission takes note of the provisions of Section 67 of Motor Vehicles Act, 1988 which stipulates that a State Government has the power to control the road transport in the State which includes fixing of fares and freights (maximum and minimum in respect thereof) for stage carriages, contract carriages and goods carriages. In accordance with the said provision, the Government of Karnataka has been issuing notifications in respect of the maximum rates of fares and freights from time to time. The notification dated 31.07.2013 of the Government of Karnataka is one of such notification directing the transport authorities in the State of Karnataka to fix the maximum rates of fares and freights (based on kms) as notified.
16. The main grievance of the Informant is that in the non-monopoly routes, OP 1 is charging a lesser fare than the maximum fare stipulated from the passengers. The Commission has carefully perused the said notification and the General Standing Order No. 760/2014-15 dated 09.01.2015 of OP 1 and observes that the said notification of the Government of Karnataka stipulates maximum rates for fares and freights (based on kms) that STCs or private operators can charge from the passengers travelling. There is no bar on the operators to charge fares less than the maximum fares stipulated by the





Government of Karnataka. In view of the aforesaid, the Commission is of the considered view that there is nothing unfair on the part of OP 1 in charging fares through a 'flexi rate' scheme, which are less than the maximum fares fixed by the Government of Karnataka in the non-monopoly routes. Further, it is observed 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 able to do so cannot be considered as an excuse for operating in a competitive market. The very principle of a competitive market is that to survive in the market, a player has to be efficient. If 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 grievance of the Informant that OP 1 is charging less than the notified fares is unfair and is in violation of Section 4 of the Act is misconceived and is not based on sound business/ economic rationale.

17. Next, another allegation of the Informant is that OP 1 has reserved some routes for itself and is not allowing the private bus operators like the Informant to operate on such routes. In this regard, the Commission observes that the Motor Vehicles Act, 1988 empowers the State Governments to regulate the road transport services in their respective states. The Commission is of the view that in the public interest, a State Government may not allow private players to operate on certain routes. Further, on certain routes like sub-urban/ rural/ hilly/ sparsely populated areas which are considered as commercially unviable for the private players to operate, in order to ensure provision of road transportation services to those areas falling under such routes, STCs have to operate their buses, even though they may have to incur losses. Thus, the Commission is of the view that the conduct of OP 1 in not permitting private players in certain routes to operate cannot be said to be unfair and anti-competitive in terms of Section 4 of the Act.



18. In regards to the allegations of the Informant that OPs are getting a host of tax exemptions and other benefits from the Government and that they are in a competitively advantageous position compared to the Informant, the Commission observes that since the OPs are entities created by the Government of Karnataka to provide road transportation services in the State, the Government of Karnataka may provide various tax exemptions and other benefits including financial aid to them for their operation. It may be noted that the Government of Karnataka is duty bound to provide road transportation services to the people of the state for which it has to spend money from the public exchequer. Thus, the Commission is of the considered view that there is nothing unfair on the part of OP 1 if it is getting various tax exemption/ grants and other benefits from the Government for its operations.
19. Accordingly, the Commission is of the view that, even if OP 1 is in a dominant position in the relevant market as defined under para 13 *supra*, the allegations raised by the Informant do not disclose any case of abuse of dominant position by OP 1 in terms of Section 4 of the Act. Since, no *prima facie* case of contravention of any of the provisions of Section 4 of the Act is made out against the OPs, the matter is ordered to be closed under the provisions of Section 26(2) of the Act.
20. Though contravention of any of provisions of the Act has not been recorded however, the Commission observes that the flexi rate scheme and classification of routes as monopoly and non-monopoly from operational point of view have come up in challenge in the instant matter. The Commission is of the view that it would be appropriate in the larger public interest that the Government of Karnataka take a fresh view regarding the aforesaid schemes/ decisions after inviting suggestions from various stakeholders. Such participatory and consultative exercise would not only inspire confidence of the stakeholders but would also make the scheme more acceptable besides obviating any possible violations of the provisions of the Act and challenge
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thereto. Let such exercise be completed preferably within a period of 60 days from the receipt of this order.

21. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

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

**New Delhi**

**Dated: 27.02.2017**