



COMPETITION COMMISSION OF INDIA

Case No. 27 of 2018

In Re:

**Shiju R**  
**TC 25/2084 (5)**  
**Dharmalayam Road**  
**Ayurveda College Junction**  
**Thiruvananthapuram 1**  
**Kerala**

**Informant**

And

**Sunil Kumar V**  
**S/o- Vishwanathan Nair**  
**Sree Vihar, TC 25/2854**  
**Near Uppidammodu Bridge**  
**Thiruvananthapuram-695001**

**Opposite Party**

CORAM

**Mr. Sudhir Mital**  
**Chairperson**

**Mr. Augustine Peter**  
**Member**

**Mr. U.C.Nahta**  
**Member**

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

1. The present information has been filed by Mr. Shiju R., proprietor of a coaching institute named Aspirant (hereinafter **the Informant**) under Section 19 (1)(a) of the Competition Act, 2002 (hereinafter, **the Act**) against Mr.



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Sunil Kumar V., stated to be the Managing Partner of Zephyr, (hereinafter the **OP**) alleging violations of the provisions of Section 3 and Section 4 of the Act. As per the information submitted, both parties are in Thiruvananthapuram, Kerala and in the same locality.

2. The Informant and the OP are stated to be engaged in provision of services of entrance coaching for MBBS and engineering students in Thiruvananthapuram, Kerala in the same locality. The primary grievance of the Informant relates to publication of certain advertisements by the OP in the leading Malayalam dailies on 5.6.2018 and 6.6.2018, which allegedly contained deceptive information about the success of the OP in NEET entrance examination for MBBS course conducted by the Central Board of Secondary Education for the year 2018.
3. The Informant has submitted that the OP has released full page advertisements in front pages of all three Malayalam dailies, viz., Malayala Manorama, Matrubhumi and Kerala Kaumudi on 5.6.2018 and 6.6.2018, falsely claiming that the OP has succeeded in generating ranks in the recently published NEET MBBS results. The Informant has further submitted that on 8.6.2018, the OP has published paid news in Matrubhumi daily, reiterating its incorrect claims that the OP has succeeded in securing various ranks in the NEET MBBS results for the year 2018.
4. The Informant has alleged that publication of false and purposefully deceptive claims through advertisements amounts to violation of Section 3 (1) of the Act.
5. The Informant has submitted that the OP enjoys a high market share, name and strength in terms of students and income. It has several thousand students in each batch and the combined strength of the OP would be around 10000 students. Its turnover out of the said coaching activities is several crores of rupees. It is alleged that the OP while enjoying a dominant position in the



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market wanted to take undue advantage of its financial power to deceive its targets in order to lure them to its enterprise.

6. The Informant has further alleged that the fraudulent advertisements of the OP are patently an abuse of its dominant position in the market, which have enabled the OP to enjoy commercial advantage over the Informant. The Informant has further submitted that the deceptive advertisements have affected the Informant's services adversely with the obvious impact that a steep fall is witnessed in the number of students joining the Informant's institute.
7. The Informant has asserted that he is not able to counter the false claims made by the OP due to the fact that firstly, he cannot spend huge amount of money to publish clarifying advertisements and secondly, the media would not stand with him in exposing the OP since the latter is a major source of revenue for them.
8. Based on the above submissions, the Informant has prayed to the Commission to restrain the OP from giving advertisements of any nature with regard to the institution name "Zephyr" in any deceptive manner, to restrain the OP from giving advertisements giving out results of students without mentioning the respective roll numbers of such students and to impose a penalty on the OP @ 10% of its average of the turnover for the preceding three financial years, for abusing its dominant position, to the prejudice of the Informant and other similarly placed institutions as provided under Section 27 of the Act.
9. The Commission on perusal of the information observes that the Informant is primarily aggrieved owing to publication of allegedly false and misleading advertisements by the OP which would impact the number of students who could join the Informant's institute.
10. In this regard, the Commission notes that in order to invoke the provisions of Section 3 of the Act, the factum of agreement has to be established first. The



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Informant has not impleaded any second party with whom the OP could be said to have arrived at *consensus ad idem* in order to enter into an anti competitive agreement. The Commission notes that in the absence of any clear assertion on the part of Informant as to presence of two parties between whom the underlying agreement is made which is allegedly anti competitive, mere publication of advertisement cannot be the subject matter of examination under section 3 of the Act.

11. The Informant has further alleged that the OP enjoys a dominant position in the market and wanted to take undue advantage of its power to deceive the Informant's targets and lure them to joining itself.
12. In order to assess violation of section 4 of the Act, it is imperative to examine whether the OP is an enterprise under section 2 (h) of the Act. The Commission observes that OP is the managing partner of a coaching institute named "Zephyr" located in the city of Thiruvananthapuram. The OP through the medium of the coaching institute is engaged in provisioning of coaching facilities to students appearing in medical and engineering entrance examinations. The activities performed by the OP are economic activities and are being carried on for commercial considerations. The Commission therefore notes that the OP in the present case falls under the definition of "enterprise" as per Section 2 (h) of the Act.
13. Furthermore, for the purpose of examining the allegations of the Informant under the provisions of section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter, it is required to assess whether the OP enjoys a position of strength required to operate independently of the market forces in the relevant market. Only when such a position is established, the Commission is required to examine whether the impugned conduct amounts to an abuse.
14. The Commission observes that coaching facilities required for engineering and medical entrance examination are different for the ones required for other



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competitive examinations like banking examinations, civil services examinations, *etc.* and therefore the relevant product market would be coaching facilities for the medical and engineering courses. The Commission also notes that a student desirous of taking coaching classes in the city of Thiruvananthapuram may not be willing to take coaching in adjacent areas of Thiruvananthapuram due to factors like proximity of his/ her high school to the coaching institute, better connectivity/ transport facilities/ infrastructure of a capital city to the rest of the state, *etc.* The Commission further observes that the alleged advertisements have been released in Malayalam dailies only. It is therefore clear that students who are familiar with Malayalam and who are located in Thiruvananthapuram are the target consumers in the present case. Therefore, Thiruvananthapuram city constitutes the relevant geographical market in the instant case.

15. The Commission, therefore, is of the opinion that the relevant market in this case is the *market for provision of coaching facilities for engineering and medical courses in the city of Thiruvananthapuram.*
16. On perusal of the information available in public domain, the Commission observes that there are many coaching institutes like Byju's classes, Aakash, FIIT JEE, Brilliant Tutorials, Career Launchers, Bansal classes, *etc.* in Thiruvananthapuram providing engineering and medical entrance coaching to the students, and thus posing competitive constraints on the OP in the relevant market.
17. Thus it doesn't appear that there is lack of competition in the relevant market which could allow the OP to operate independently of its competitors in the relevant market.
18. The Informant has also alleged dominant position of the OP on the basis of internal strength of the OP, i.e. 10,000 number of students, turnover of crores of rupees, *etc.* In this regard, the Commission observes that dominant position of the OP has to be determined with reference to its relative strength *vis-a-vis*



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the market, and not based on internal strength of the enterprise alone. The Commission is therefore of the view that based on the foregoing, the OP doesn't enjoy a dominant position in the relevant market.

19. Even otherwise, the Commission is of the view that allegations raised by the Informant do not raise any competition concerns that would merit intervention by the Commission. Mere publication of advertisement doesn't raise any competition issue from the point of view of either Section 3 or Section 4 of the Act.

20. In view of the foregoing, the Commission is of the view that no case of contravention of the provisions of the Act is made out against the OP and the matter is ordered to be closed in terms of the provisions of Section 26 (2) of the Act.

21. The Secretary is directed to communicate this order to the Informant accordingly.

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

**Sd/-  
(Augustine Peter)  
Member**

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

**New Delhi**

**Date: 11/09/2018**