



COMPETITION COMMISSION OF INDIA

Case No. 45 of 2017

In Re:

**Indian Motion Picture Producers' Association
(Through its President – Shri T. P. Agarwal)
G – 1 to 7, Crescent Tower, Andheri (West),
Mumbai – 400 053, Maharashtra.**

Informant

AND

**1. Federation of Western India Cine Employees
113, Kartik Complex, New Link Road,
Andheri (W),
Mumbai – 400 053, Maharashtra.**

Opposite Party-1

**2. Western India Motion Picture and TV Sound
Engineers' Association
7B, G-26, Juhu Sangeeta Apartments CHS Ltd.,
Behind Lido Cinema, Juhu,
Mumbai – 400 049, Maharashtra.**

Opposite Party -2

**3. Film Studio Setting and Allied Mazdoor Union
113, Kartik Complex, New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra.**

Opposite Party -3

**4. Association of Film and Video Editors
Unit No. 203, 2rd Floor, Plot No. D/11,
Oshiwara Indl. Centre, New Link Road,
Opp. Oshiwara Bus Depot, Goregaon (W),
Mumbai – 400 104, Maharashtra.**

Opposite Party -4



- 5. Association of Cine and TV Art Directors & Costume Designers**
237/238, Kuber Complex, New Link Road,
Andheri (W), Mumbai – 400 053, Maharashtra. **Opposite Party -5**
- 6. Association of Voice Artistes**
Aashirwad CHSL, Room No. D-1, Plot No. 66,
SVP Nagar, MHADA, Andheri (W),
Mumbai – 400 053, Maharashtra. **Opposite Party -6**
- 7. The Cine and TV Artistes Association**
221, Kartik Complex, Opp. Laxmi Indl. Estate,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra. **Opposite Party -7**
- 8. Cine Costumes & Make-up Artistes & Hair Dressers' Association**
222/225, Kartik Complex, New Link Road,
Andheri (W), Mumbai – 400 053, Maharashtra. **Opposite Party -8**
- 9. Cine Singers' Association**
413-B, Mastermind I, IT Park Royal Palms Estate,
Aarey Milk Colony Road, Goregaon (E),
Mumbai – 400 065. , Maharashtra. **Opposite Party -9**
- 10. Cine Musicians' Association**
206, Crescent Towers, Off. Link Road,
Andheri (W), Mumbai – 400 053, Maharashtra. **Opposite Party -10**
- 11. Cine Dancers' Association**
Shop No. 44, Kuber Complex,
Opp. Laxmi Industrial Estate, New Link Road,
Andheri (W), Mumbai – 400 053, Maharashtra. **Opposite Party -11**



- 12. Cine Still Photographers Association**
662, Adarsh Nagar, Behind Hanuman Mandir,
New Link Road, Oshiwara, Jogeshwari (W),
Mumbai – 400 053, Maharashtra. **Opposite Party -12**
- 13. Indian Film and TV Directors' Association**
G-8/9/10, Crescent Tower, Near Morya House,
Opp. Infinity Mall, Off. New Link Road,
Andheri (W), Mumbai – 400 053. , Maharashtra. **Opposite Party -13**
- 14. Junior Artistes Association**
Navalkarwadi, Gala No. 3, Near Fish Market,
Jogeshwari (E), Mumbai – 400 060, Maharashtra. **Opposite Party -14**
- 15. Cine Composers Association of India**
(Cine Music Directors' Association)
D-708, Crystal Plaza, New Link Road,
Andheri (W), Mumbai – 400 053, Maharashtra. **Opposite Party -15**
- 16. Movie Action Dummy Effects Association**
B-31, Oshiwara Industrial Centre, Link Road,
Opp. Oshiwara Bus Depot, Goregaon (W),
Mumbai – 400 104, Maharashtra. **Opposite Party -16**
- 17. Film Writers' Association**
201, Richa Industrial Estate, 2nd Floor,
Plot No. B-29, Off. Link Road, Oshiwara,
Andheri (W), Mumbai – 400 053, Maharashtra. **Opposite Party -17**
- 18. Western India Cinematographers' Association**
24, 2nd Floor, Om Heera Panna Arcade,
Opp. City International School,
New Link Road, Oshiwara, Jogeshwari (W),
Mumbai – 400 102. , Maharashtra. **Opposite Party -18**



19. Movie Stunt Artistes Association

**602-604, Dilkap Chambers,
Veera Desai Indl. Estate, Veera Desai Road,
Andheri (W), Mumbai – 400 053, Maharashtra.**

Opposite Party -19

20. Cine Agents' Combine

**C/o Shri Pappu Lekhraj Nanda
19, Nanda Bhawan, Bajaj,
Vile Parle, Andheri (W),
Mumbai – 400 056, Maharashtra.**

Opposite Party -20

21. Mahila Kalakar Sangh

**418, Adarsh Nagar, New Link Road,
Oshiwara, Jogeshwari (W),
Mumbai – 400 102, Maharashtra.**

Opposite Party -21

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

**Mr. Justice G. P. Mittal
Member**



Appearances: *Shri Ashok Sarogi, Advocate*
 Shri R. R. Sharma, Advocate
 Shri Bhushan Ozha, Advocate
 Shri R. C. Gar, Executive Member (IMPPA)
 Shri T. P. Aggarwal, President (IMPPA)

ORDER

1. The present information has been filed by Indian Motion Picture Producers' Association under Section 19(1)(a) of the Competition Act (hereinafter 'the Act') against Federation of Western India Cine Employees (OP-1) and its affiliates (OP-2 to OP-21) alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. In the information, the Informant has averred as follows:
 - 2.1 The Informant is a company registered under the provisions of the Companies Act, 2013 as well as under the Co-operative Societies Act, 1912. The members of the Informant are engaged in the business of production of films and daily programmes for the television channels.
 - 2.2 OP-1 is a federation of different craft associations associated with the film industry in Western India (Mumbai based film & television industry) and is registered under the provisions of the Trade Unions Act, 1926. It is submitted that as OP-2 to OP-21 are affiliated to the federation OP-1, it can be said to be the parent body of all affiliated associations.
 - 2.3 It is alleged that the OPs are forcing the members of the Informant to accept the services of craftsmen who are members/ persons associated with OP-1 or its affiliates. The OPs, who are associations of specific classes of persons/ crafts, are dictating their terms to the Informant/ producers and monopolising the film production business as without their consent, no producer is entitled to produce any film or program in any manner whatsoever. Thus, a person is compelled to follow the terms dictated by the OPs which is contrary to the provisions of the Act.



2.4 The members of the Informant are prevented by the OPs from carrying on their legitimate business because of the unreasonable and arbitrary dictates of the OPs thereby stalling the shooting and post- production activities of tele-serials and films all over India.

2.5 In particular, the Informant has alleged the anti-competitive behaviour of the OPs with regard to issuance of non-cooperative directives and imposition of compulsory holidays on certain occasions through directives. The list of directives issued is as follows:

- a. Letter dated 4th February, 2016, directing the Informant and its members to observe second Sunday of every month as a compulsory holiday.
- b. Non-cooperation directives have been issued against the following producers for non-payment of dues to members of OP-1 or its affiliates':
 - i. Ms. Fauzia Arshi, Producer of Dairy Multi Media Ltd. for the film 'Dimag ki Dahi';
 - ii. Mr. Chandan Arora, Producer of M/s Makefilms for the film 'Striker';
 - iii. Mr. Rajesh Joshi, Producer of M/s Om Worldwide Entertainment for the film 'Full 2 Dhamal';
 - iv. Mr. Firoz Nadiawala, Producer of M/s Base Industries Group for the film 'Welcome Back';
 - v. Mr. Sandesh Shardul and Mr. Keshav, Producers of M/s Emotions Art Entertainment for the TV serial 'Rang Rangilo Bake Bihari';
 - vi. Mr. Vijay Gupta, Producer of M/s VRG Motion Pictures P. Ltd. for the film 'Badmashiyani';
 - vii. Mr. Abhishek P. Jawkar and Ms. Aahuti Mistry, Producers of M/s The Red Bulb Studios for the film 'Weekend';
 - viii. Mr. Sanjay Ahluwalia, Producers of M/s Rupali Entertainment for the Marathi film 'Welcome Zindagi';
 - ix. Mr. Furqan Khan and Mr. Tutu Sharma, Producers of Swiss Entertainment Pvt. Ltd. for the film 'One Night Stand'; and



- x. Ms. Mandira Kashyap, Producer of M/s Wisdomtree Productions for the film 'Zed Plus'.
 - c. Issuance of letter dated 18th January, 2017 specifying a list of holidays for the year 2017 on which no shooting, recording, post-production activities *etc.* concerning films, serials, videos, albums, advertisements *etc.* would be allowed. It was also warned that in case the Vigilance Team finds any of the producers not complying with the directives, they shall be solely responsible for any inconvenience/ damage/ financial loss that may be caused due to stoppage of work on that day.
 - d. Issuance of letter dated 17th April, 2017 proposing a wage hike of 22% w.e.f. 1st May, 2017 in the wage rate of all craftsmen except for 6 crafts *viz.* actors, writers, directors, editors, music directors and directors of photography.
 - e. Through a letter dated 20th July, 2017, apart from the abolition of coordinator (middle men) system in the Cine Dancers Association (CDA) and Indian Film and Television Choreographers Association (IFTCA), OP-1 introduced a unilateral and arbitrary hike in the wages of dancers.
 - f. OP-1 through a notice dated 31st July, 2017 called for a strike with effect from 15th August, 2017 on behalf of all the workers because of non-fulfilment of their demands by the members of the Informant as the assurances given in writing as well as agreed orally had not been met.
 - g. OP-1 through a letter dated 31st July, 2017 directed all its affiliates to not allow their members to work in any Tamil films shot in Mumbai for showing their support to Film Employees' Federation of South India (FEFSI) in their tussle with the producers.
3. The Commission has perused the information and the material placed on record by the Informant therewith. It is observed that the Informant has essentially and substantially raised the allegation of issuing of directives by the OPs which are stated to be in contravention of the provisions of Section 3(3) (b) read with 3(1) and Section 4 of the



Act. Primarily, the allegations relate to directing the Informant and its members through frequent *diktats* on multiple issues such as observing mandatory holidays on second Sunday of every month in addition to a list of holidays for the year 2017 on religious occasions; directives on wage hike of 22% in the wage rate of craftsmen; and non-cooperation directives against members of the Informant for non-payment of dues *etc.*

4. It is pertinent to mention here that this information was filed at a time when another similar matter *i.e.* Case No. 19 of 2014 titled as *Shri Vipul A. Shah v. All India Film Employee Federation* was pending before the Commission involving similar issues against the same OPs except OP-21. By the time this matter was considered by the Commission, Case No. 19 of 2014 was already disposed of by passing cease and desist order against the OPs except OP-21 of the present case. The present Informant had also put forth his submissions in that case on issues overlapping with this case. Hence, the order passed in the case cited above has already settled the position of the Commission on the issues raised in this information.
5. With regard to the circulars directing the producers to observe holidays including festivals and second Sundays of every month, the Commission in case of *Shri Vipul A. Shah (supra)* has already observed that fixing of holidays is a matter not within the domain of Competition Act. The Commission had observed as below:

“...Further, Second Schedule and Third Schedule of the Industrial Disputes Act, 1947 relate to the jurisdiction of labour courts and industrial tribunal. The Commission notes that they only pertain to disputes related to discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed; withdrawal of any customary concession or privilege; illegality or otherwise of a strike or lock-out; wages, including the period and mode of payment; compensatory and other allowances; hours of work and rest intervals; leave with wages and holidays; bonus, profit sharing, provident fund and gratuity; shift working otherwise than in accordance with standing orders; classification by grades; rules of discipline; rationalisation; retrenchment of workmen and closure of establishment, etc.” (emphasis supplied)



6. With respect to fixation of minimum wages, it was held that though prescribing wages has the effect of fixation of price of services, wages and increment being also a part of conditions of labour/ term of employment can fall within the realm of legitimate trade union activities when it is duly negotiated by a registered trade union. Thus, the same is not anti-competitive. Regarding the issue of non-co-operation directives issued against the members of the Informant, the Commission in the earlier order had noted that the directives tend to disrupt competition and fair play in the market which amounts to limiting and controlling the services. The Commission had observed as below:

“202. The associations have used their position to disrupt competition and fair play in the market through their anti-competitive conduct. Through the provision of Clauses 6 and 18 of the MoU, the OPs have indulged in anti-competitive conduct such as issuing non-cooperation directives, prohibiting hiring of specialised non-member artists, conducting vigilance checks, stalling shoots for hiring of non-members and levying of penalty. All this amounts to limiting and controlling the services in the western Indian film and television industry...

203. Based on the foregoing discussion, analysis of evidence and considering the facts and circumstances of the case, the Commission is of the view that:

(a) OPs-1 and 2 has contravened Section 3(3)(b) and 3(3)(c) read with Section 3(1) of the Act, and

(b) OPs-6 to 28 have contravened Section 3(3)(b) read with Section 3(1) of the Act, ”

7. Further, after detailed investigation by the DG in the case of *Shri Vipul A. Shah (supra)*, the Commission has categorically given findings about the areas of contravention by the OPs and has passed a cease and desist order under Section 27 of the Act. Since the Commission has already dealt with the allegations in respect of the conduct of the OPs, it is not expected to do the same again and again and deal with successive informations filed for the same conduct against the same parties by separate orders. Thus, the Commission is of the view that no further deliberation upon the allegations is required as they have been dealt with in the aforesaid decision of the Commission.



सत्यमेव जयते



8. It may be noted that the object and purpose of the Act is to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. The Commission is a market regulator and does not decide *lis* between parties but rather takes note of an anti-competitive conduct which may be brought to its notice by any person or enterprise by way of filing of an information. The Commission passes various orders under Section 27 of the Act including directing the enterprise or person in contravention of the provisions of Sections 3 or 4 of the Act to discontinue such behaviour and/ or impose such monetary penalty upon it not exceeding the limit specified in the section. Such an order has already been passed against the OPs who have to abide by the order.
9. As far as the allegations made under Section 4 are concerned, the Commission observes that no material whatsoever has been brought on record by the Informant to suggest that the OPs are engaged in any economic activity in order to be considered 'enterprise' for the purpose of assessment of dominance under the provisions of Section 4 of the Act. In the absence of any such material, no conclusion of abuse of dominance can be drawn on the basis of bald allegations. Thus, the Commission does not deem it necessary to examine the allegations raised under Section 4 of the Act.
10. The Informant has also moved an application under Section 33 of the Act seeking interim relief by praying for an injunction restraining OP-1 and its affiliates from interfering in any manner with the shooting of films/ television programs during the pendency of the present case. For the reasons stated above, since the Commission is not inclined to take cognizance of the information, the application filed under Section 33 of the Act too cannot be entertained.
11. It is clarified that the orders of the Commission are *in rem* and not *in personam*. As such, if an order is issued for market correction, the Commission is not obligated to take cognizance of successive informations brought by different parties' agitating the same issue. To order investigation repeatedly on the same issues would result in sub-



optimal utilisation of the resources of the Commission, and the same would cause wastage of public money besides being a futile exercise.

12. Hence, in view of the above, the Commission hereby disposes of the present information. However, it is made clear that if the alleged conduct of the OPs still continues in defiance of the order dated 31.10.2017 passed in Case No. 19 of 2014, the Informant is at liberty to approach the Commission under the appropriate provisions of the Act.
13. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

Place: New Delhi
Date: 18.04.2018