

COMPETITION COMMISSION OF INDIA

30th November, 2011.

Case No.54/2011

Filed by: Shri Debapriyo Bhattacharya,
S/o Shri Debdana Bhattacharya,
112A, LGF Lawyers Chamber,
Patiala House Courts, New Delhi. Informant

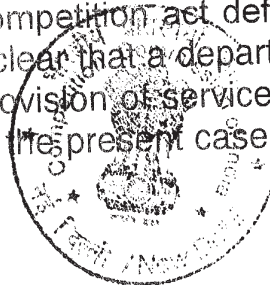
Against: 1. The Principal Secretary,
Home (General A) Department
A Block, AP Secretariat,
Hyderabad-500022. Opposite Party No. 1

2. Galaxy Entertainers Private Ltd.,
Through The Director (Easy Cinema)
Plot no. 17, 3rd Floor Mithilanagar,
Road No. 10, Banjar Hills,
Hyderabad-520002. Opposite Party No. 2

ORDER U/S 26(2) OF THE COMPETITION ACT

The informant in this case approached the Commission stating that a notification dated 19th February, 2009 issued by the Principal Secretary to the State Government of Andhra Pradesh was violative of section 4 of the Competition Act as by this notification the State Government (Opposite Party No. 1) granted exclusive licence for e-ticketing to the Opposite Party No. 2.

The first issue to be examined by the Commission was whether the State Government can be proceeded against before the Commission. Section 2(h) of the Competition Act defines an 'enterprise'. The definition of enterprise makes it clear that a department of Government engaged in any activity relating to provision of service or control of service was covered under the definition. In the present case, the Secretary to the

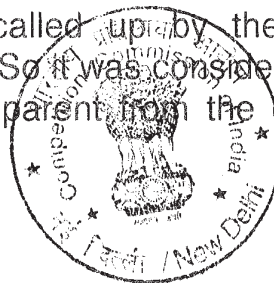


State Government issued notification in respect of grant of licence for e-ticketing. Licencing amounts to control over the provision of service and, therefore, any act of the Secretary or the State Government which relates to control of services was covered under the purview of the Competition Commission. Undoubtedly, issuing licence for providing cinema tickets to a party is not a sovereign function of the State and it is a function being exercised in control of services.

Even otherwise, section 18 imposes a duty on the Commission to eliminate practices having adverse effect on competition and to promote and sustain competition in order to protect the interests of consumers and to ensure freedom of trade being carried on by the persons in the markets in India. Therefore, the Commission can consider the act of the states from this angle and it would be the duty of the Commission to eliminate any practice which it finds to be anti competitive even if such a practice is being adopted by a department of the Government so as to ensure and sustain competition. We therefore, come to a conclusion that the State of Andhra Pradesh was covered within the jurisdiction of the Commission.

A perusal of the notification issued by the State Government would show that the State Government had formed a Committee to examine whether there should be a single state level operating agency for introduction of computerised ticket booking or there should be multiple agencies. The Committee was also to consider the proposals from different agencies who were having paraphernalia for e-ticketing. The Committee decided that a single agency system would be more appropriate and suitable and thereafter the Committee went on to consider the proposals submitted by different agencies. The Committee had considered the proposals from 8 agencies and given opportunity to all these agencies for making presentation before the Committee. The Committee after considering the proposals selected one agency i.e. Opposite Party No. 2. It is also recorded in the notification that the party who was earlier handling e-ticketing had approached Andhra Pradesh High Court in WP No. 21723 of 2009 and an interim order was passed by the High Court.

When the matter was called up by the Commission for hearing, the informant did not appear. So it was considered on the basis of material available on record. It is apparent from the documents placed



before the Commission that it was not a case where issues of anti competition were involved but it was a case where issue of discrimination in the mode of selection of the agent was involved. We, therefore, find that there existed no prima facie case for the Commission to refer the matter for investigation. The matter is closed herewith under Section 26(2) of the Competition Act.

Secretary is directed to inform the concerned parties suitably.

Sd/-
Member (G)

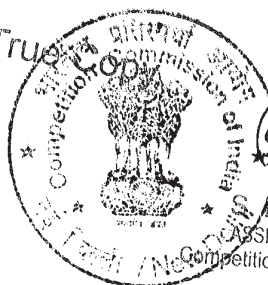
Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Chairperson

Sd/-
Member (D)

Certified True



P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi