

COMPETITION APPELLATE TRIBUNAL

Appeal No. 13/2016

With

I.A. No. 08/2017

[Under Section 53B of the Competition Act, 2002 against the order dated 27.07.2015 passed by the Competition Commission of India in Case No. 58/2012]

CORAM

Hon'ble Shri Rajeev Kher
Member

Hon'ble Ms. Anita Kapur
Member

In the matter of:

Karnataka Film Chamber of Commerce,
28, 1st Main, Crescent Road,
High Grounds,
Bangalore – 560 001.

...Appellant

Versus

1. Kannada Grahakara Koota,
No. 162, "Akkare", Puttappa Compound,
Aswath Nagara, R.M.V. 2nd Stage,
Bangalore – 560 094.
2. Shri Ganesh Chetan,
President, Kannada Grahakara Koota,
"Akkare", Puttappa Compound,
Aswath Nagara, R.M.V. 2nd Stage,
Bangalore – 560 094.
3. Competition Commission of India,
Through its Secretary,
Hindustan Times House,
18-20, Katurba Gandhi Marg,
New Delhi – 110 001.
4. Karnataka Television Association,

M.V. Seetaramaiah Road,
3rd Cross, Gavipuram Extension,
Bangalore – 560 019.

5. Karnataka Film Directors Association,
No. 39, Near Prasanna Pramod Theatre,
12th 'D' Main, 76th 'A' Cross,
6th Block, Rajajinagar,
Bangalore – 560 010.

6. Kannada Film Producers Association,
No. 82/82, 5th Main Road, Gandhinagar,
Bangalore – 560 009.

7. Karnataka Chalanachitra Academy,
Badami House, Opp. To BBMP Office,
Bangalore – 560 002.

8. Karnataka Film Artists, Workers
And Technicians Union,
1/1, 2nd Main Road, Gandhi Nagar,
Bangalore – 560 009

...Respondents

Appearances: Shri Balaji Srinivasan with Shri K. Harshavardhan,
Advocates for the Appellant

Shri Aniruddha Deshmukh, Advocate for
Respondent No. 1 and 2

Shri Naveen Nath with Shri Vanshdeep Dalmia,
Advocate for Respondent No. 3

ORDER

Karnataka Film Chamber of Commerce (KFCC), the Appellant
in this case is aggrieved by the order dated 27.07.2015 of the
Competition Commission of India (hereafter referred to as, 'the
Commission') passed under Section 27 of the Competition Act, 2002

(for short, 'the Act'). The Commission found that the conduct of the Appellant, the Karnataka Television Association (KTVA) and the Kannada Film Producers Association (KFPA) resulted in limiting and restricting the market of dubbed films/serials in Kannada language and was in contravention of Section 3(1) read with Section 3(3)(b) of the Act. The Commission directed the Appellant, KTVA and KFPA to cease and desist from indulging in practices found to be anti-competitive and to bring out a Competition Compliance Manual to educate their members about the competition law principles and play an active role in creating awareness among their members of the provisions of the Act through competition advocacy. Further, a penalty of Rs.16,82,204 was imposed on the Appellant. Penalty of Rs.1,74,293 and Rs.1,68,124 was imposed on KTVA and KFPA respectively.

2. The Appellant is an association of film producers, distributors and theatre owners. It is registered as a non-profit society under the Karnataka Societies Registration Act, 1960. The facts of the case are that, Kannada Grahakara Koota (Respondent No. 1) and Shri Ganesh Chetan (Respondent No. 2) had filed information in terms of Section 19 (1) (a) of the Act alleging anti-competitive practices and cartelization within the Karnataka Film and television industry. The information was filed against the Appellant, KTVA, KFPA, Karnataka Film Directors Association (KFDA), Karnataka Chalanachitra

Academy (KCA) and Karnataka Film Artists, Workers and Technicians Union(KFAWTU). The thrust of the Informants' allegation was that the market of films and television shows within the State of Karnataka was restricted due to the collective action of these associations, prohibiting telecasting of dubbed content from any other language into Kannada, and banning making, releasing and exhibiting of dubbed films. Specific instances of alleged blocking of telecast of dubbed TV serials "Satyameva Jayate" and Rani Laxmibai of Jhansi and exhibition of film "Koffi Shop", were cited in this context.

3. The Commission was of the opinion that, there existed a *prima facie* case and vide its order dated 18.10.2012 directed the Director General (DG) to cause an investigation to be made into the matter. The DG submitted its investigation report dated 29.4.2013 with the conclusion that the Appellant, KTVA and KFPA had indulged in anti-competitive conduct by putting restrictions on the production and exhibition of dubbed version of films/TV programmes of non-Kannada language, in contravention of Section 3(1) and Section 3(3)(b) of the Act. The DG was of the view that, the activities of other associations were not within the purview of Section 3 (3) of the Act as these were not the associations of enterprises engaged in the production and exhibition/telecast of films or TV programmes.

4. Since KFCC is the Appellant before us, we are, in this order, limiting our analysis to the factual and legal issues pertaining to the conduct of KFCC.

5. The specific findings of the DG, in so far as these concern the Appellant, were as follow:

(i) The films and TV programmes were interchangeable in character as most of the persons engaged in the films were also engaged in the TV programmes and the process of producing films and TV programmes was similar and only the medium of exhibition made them different in nature. The claim of the Appellant that the films and TV programmes were different markets was not acceptable. The rules/regulations and market conditions for carrying out the business of film/TV production and exhibition were different in Karnataka from the other states, making Karnataka a different geographical market. The relevant market for the purpose of investigation, therefore, was the “production and exhibition/telecast of films and TV programmes in the State of Karnataka.”

(ii) The Appellant was the most important organisation of the film industry of Karnataka and was the parental body of all the film trade associations. Governmental bodies like Film Certification and Censor Board and Karnataka State

Information Department recognised the Appellant as representative of the entire Kannada film industry and title registration, publicity clearance, certificates for tax exemption of Kannada movies, were generally granted on the recommendations of the Appellant.

- (iii) The Appellant enjoyed a great market power in film production, distribution and exhibition, in Karnataka. KTVA had similar status in the TV industry in Karnataka. KFPA, was an association of film producers of the Kannada film industry and exercised its power jointly with the Appellant to implement its decisions. The producer members of these associations were generally common as a film producer may also be producer of TV programmes.
- (iv) Dubbing of foreign films and TV shows was permitted internationally and also in India. However, no dubbed film or TV programme had been released in Karnataka in the last 40-50 years. The restriction on dubbed contents was prevalent only in Karnataka and to some extent in West Bengal. The case regarding the State of West Bengal had been separately investigated and in that case viz 16/2011, the Commission had found such restrictions violative of Section 3 (3) of the Act.

- (v) The bye-laws of the Appellant did not contain restrictions on other language films or programmes but in practice the Appellant had opposed dubbed films. Restriction of dubbed TV programmes had been spearheaded by KTVA along with the Appellant and other associations.
- (vi) The stance of the Appellant that it was not concerned with TV industry was contrary to the material on record. The Business head of Asia Net (Suvarna Channel) had written a letter dated 16.4.2012 to the Appellant requesting for its cooperation for telecast of a Hindi serial 'Satyameva Jayate' with Kannada subtitles, on Suvarna channel. Aamir Khan, the producer of the programme addressed a similar letter dated nil to the President of the Appellant. The letter dated 16.4.2012 (*ibid*) was forwarded by the Appellant to KTVA on 18.4.2012. KTVA asked its dubbing Committee to take a decision, and on 20.4.2012 Suvarna Channel invited KTVA to discuss the matter after which Suvarna channel decided not to telecast the said programme with subtitles in Kannada. KTVA admittedly did not agree for telecast of this programme following a policy of protection of Kannada language and culture and in line with the position taken by Karnataka Sahithya Parishad, and vide letter dated 24.4.2012, KTVA informed the Appellant that the proposal of Suvarna channel cannot

be allowed as it was a non-kannada programme. The Appellant wrote to Aamir Khan on 3.5.2012 informing that the subject matter of his letter was a matter between him and the channel concerned which had taken a decision in accordance with the decision of KTVA.

- (vii) The Suvarna channel, in its response to the DG's letter had, *inter-alia*, stated that ".....Mr. Aamir Khan, the producer of the programme had personally written to KFCC for extending support to have the programme dubbed in Kannada and telecast in Suvarna Channel. As KFCC did not respond as sought for and as there exists an informal embargo by them on dubbing movies or programmes of other language into Kannada, we had proposed to telecast the original Hindi version with Kannada subtitles in our Suvarna channel. We had written to KFCC and KTA to secure their cooperation for telecast of the programme in its original language, i.e. Hindi with sub-titles in Kannada. KFCC and KTA did not respond to these letters. As we apprehended violent resistance and protest from KFCC and/or KTA if we still went ahead with our proposal, we did not telecast the programme."

The above stated facts confirmed that, due to the practices and decisions of these associations the serial

'Satyameva Jayate' could not be telecast on Suvarna Channel.

- (viii) KTVA accepted its role in opposing dubbed content of 'Jhansi ki Rani'.
- (ix) During investigation in earlier cases against the Appellant, it was found that the Appellant imposed restrictions on distribution and exhibition of dubbed films in Kannada language. Though the Appellant, during the current investigation denied imposition of such restrictions, the evidence of Sh. Geetha Krishna, producer of the film 'Koffi Shop', supports the informants' allegation of restrictive practices of the Appellant. Shri Geetha Krishna stated as follows:

"I had lost several crores of rupees business because of gross interference from KFCC in the release of his Kannada film 'Koffi Shop' which was cleared by the Central Board of Karnataka since it was a straight film. KFCC has mischievously alleged that the film 'Koffi Shop' was a dubbed film. In fact, "Koffi Shop" was straight film shot separately along with two other films in Telugu and Tamil. (I have enclosed copies of the Censor Board certificate as well as the letter issued by the Karnataka

Government granting 100 per cent tax exemption given only to straight films).

As they are fully aware that their restrictions have no legal validity, they never commit any of their authoritarian instructions in writing. They resort to communicating all their wrongful instructions through phone calls and SMS. The modus operandi they adopt to harass 'outside' producers like me is to hold secret meetings and gather misguided people and hooligans and provoke them to damage cinemas which decide to screen the films 'banned' by KFCC.

A couple of newspapers heavily dependent on film advertisement are threatened not to carry advertisements released by producers of films opposed by KFCC. One of written evidences I got was a letter KFCC had sent to newspaper advertisement departments not to accept advertisements released from me.

My film was planned to be released all over Karnataka, but due to KFCC interference it could be released only in three theatres that too for a few days. My film was completely blocked in all cinemas in Bangalore and all other cities in Karnataka because of which I suffered loss in crores of rupees. I had met with heavy resistance and protests from KFCC and other affiliated

organizations in Karnataka. The conduct of the KFCC and other opposite parties by not allowing my film from being released has resulted in heavy loss in terms of economic value as well as personal brand and reputation in the industry”

- (x) It was an admitted fact that the Appellant issued letters to the local newspapers not to carry advertisements released by the producer of the film ‘Koffi Shop’.
- (xi) The minutes of the Emergency Executive Committee meeting of the Appellant held on 23.01.2012, indicated that KFPA was also involved in taking decisions to boycott film theatres.
- (xii) The Appellant, KTVA and KFPA being associations of enterprise engaged in the production and exhibition of films and TV programmes can be treated to be engaged in similar or identical trade and provisions of Section 3(3) of the Act could be invoked against them and any agreement or joint action taken by them would attract the provisions of Section 3(3) of the Act, being in the nature of horizontal agreement. These associations were collectively deciding not to allow production, distribution and exhibition of films and television serials dubbed in Kannada language and this impeded competition in the market. By not allowing dubbed

version, they restricted supply of content in the market and caused foreclosure of competition by hindering entry into the market in terms of Section 19(3) (c) of the Act. The factors listed in clauses (d) to (f) of Section 19(3) of the Act did not apply to justify the conduct of the associations as no benefit accrued to the customers; there was no improvement in production or distribution of goods/services by such restrictive practices; these practices did not cause promotion of technical, scientific and economic development .

- (xiii) The provisions of Section 3(3) of the Act were not attracted with regard to KFDA, KCA and KFAWTU as they did not comprise of enterprises engaged in the production and exhibition/telecast of films/TV programmes and catered to the specific needs and welfare of their members.

6. The Commission took note of the findings of the DG and invited objections/comments of the Appellant and other associations whose conduct was found in contravention of the Act. The Commission also called for the comments of the Informants. The Informants supported the findings of the DG's report except those recommending exclusion of some associations. The response of the Appellant to the DG's

report has been summarised in paragraph 4.2 of the impugned order, which in essence is similar to the submissions made before us, and discussed in the latter part of this order. The Commission, after considering the response of the Appellant and other associations as also the informants, listed the following two issues for determination:

“Issue 1: Whether the Opposite Parties have imposed restrictions on the dubbed version (Kannada) of other language films/TV programmes to be exhibited/telecast in the State of Karnataka?

Issue 2: Whether the conduct of Opposite Parties is in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act?

7. In paragraphs 6.3 to 6.5 of the impugned order, the Commission has noted the following specifics to conclude that the Appellant prevented release/telecast of dubbed films/TV serials in the State of Karnataka:

- i. In 2011, the proposal of Zee Kannada to telecast the Hindi serial ‘Jhansi ki Rani’ was met with protest by members of KTVA, a fact admitted by KTVA. Suvarna Channel’s proposal to air dubbed programme of ‘Satyameva Jayate’ even with Kannada sub-titles, was opposed and letter dated 24.04.2012 was issued by KTVA to the Appellant wherein it was conveyed that, the programme being a non-Kannada programme could

not be telecast in Kannada . Shri B. Suresha, a member of KTVA had given a statement that, practice of preventing telecast of dubbed films/serial was prevalent and the minutes of the meeting (undated) of the Committee formed in respect of dubbing issue on 25.09.2011, confirmed these facts.

- ii. There was no data of dubbed films for the past number of years as noted by the DG from the annual report published by the Censor Board. Further, Shri Geetha Krishna, Producer-Director of the film 'Koffi Shop', in his reply to the DG's notice had submitted that, despite his film 'Koffi Shop' being a Kannada film, the Appellant interfered in the release of the film in Karnataka alleging that it was a dubbed film. Sh. Geetha Krishna had claimed that his film met with a series of demonstrations and protests, which were covered by the media. He also stated that Zee TV, which had bought telecast rights of the film, had informed him that the Appellant had asked the TV channel not to air the film. Sh. Geetha Krishna had asserted that, such a conduct of the Appellant was in spite of a court order directing the Appellant not to interfere with the release of the film.
- iii. The minutes of the Emergency Executive Committee Meeting of the Appellant dated 23.01.2012, in which members of KFPA also participated indicated that the participants discussed the hardship that was caused to the Kannada movies due to other

language movies and it was also discussed that, the Appellant and all associations of the industry had to finally prevent menace of other language movies.

8. The Commission took note of the fact that, the restrictions imposed on the dubbed version of TV serials had been declared anti-competitive in a similar case involving the West Bengal Film and Television Industry viz. case No. 16/2011. The Commission also referred to its following findings in the Case No. 56 of 2010 in regard to the Appellant :

“In this regard, the Commission observes that there could be other ways to promote non-regional and non-language films. In any case, the preference to a particular film must be left to the consumers in the market. The restrictions on number of screens imposed in certain pockets by KFCC in the name of promotion and protection of Kannada language films causes restriction and impedes competition in the market, which are prohibited under the Indian Competition Act. The Commission holds that the above action arises out of agreement among the members of the association which gets reflected in decision or practice carried on by KFCC and results into

limit on supply of films in the market which is violative of section 3(3)(b) of the Act.”

9. The Commission confirmed the DG’s delineation of the market and the finding that, joint action/decisions were taken by the Appellant, KTVA and KFPA, affecting the film and television market. The Commission, further held that even if film and television industry were taken as separate product markets, the Appellant and other associations were still in the purview of Section 3 of the Act. The Commission was of the view that, the decisions taken or practices carried on by such associations were individually covered within the scope of agreements falling under Section 3 (1) read with Section 3 (3)(b) of the Act, which raises a presumption of appreciable adverse effect on competition. The arguments of the associations that they were trying to protect local language and culture and local artists have been discussed and dismissed by the Commission in paragraphs 7.17 to 7.24 of the impugned order.

10. The Commission, therefore, concluded that the conduct of the Appellant, KTVA and KFPA resulted in limiting and restricting the market of dubbed films/serials in Kannada language in contravention of Section 3 (1) read with Section 3 (3)(b) of the Act and issued the directions and imposed the penalties as summarised in paragraph 1 of this order.

11. KTVA and KFPA have not challenged the impugned order and only the Appellant has filed the present appeal. Arguments were made before us by the learned counsels representing the Appellant and Respondent Nos. 1, 2 and 3. None appeared for the Respondent Nos. 4 to 8.

11.1 In the course of hearing before us, the Appellant filed an Interlocutory Application (I.A.) seeking permission to file additional documents. We have given our decision in regard to the aforesaid application in the latter part of this order.

11.2 Written submissions were filed on behalf of Respondent Nos. 1 and 2 in the course of the hearing on 20.2.2017 and the counsel for the Appellant sought time to file written submissions. We accepted this request and vide our Order dated 20.2.2017 accorded him permission to file the written submissions within 7 days. However, written submissions were not filed by the Appellant.

12. Shri Balaji Srinivasan, learned counsel for the Appellant submitted that, the impugned order suffered from non-application of mind and was liable to be set aside on merits. His oral arguments and various contentions in the appeal memo are as follows:

- (i) The Appellant was only a welfare association and not an enterprise engaged in production, distribution and exhibition of films and hence would not come within the purview of either Section 3 or 4 of the Act.
- (ii) In terms of Section 3(3) of the Act, there had to be an agreement between the enterprises or associations of enterprises or persons or associations of persons or between any person or enterprise. In the present case, no such agreement was entered into by the Appellant with any other person or enterprise or any other association. The Appellant was not directly engaged in any activity relating to the production, supply, distribution, storage, acquisition or control of articles or goods or the provisions of services of any kind concerning the distribution/exhibition of films.
- (iii) The DG and the Commission had wrongly delineated the market as production and exhibition/telecast of Films and TV programmes in the State of Karnataka. Two entirely different product market i.e. film industry and the television industry with no co-relation with each other, were erroneously clubbed. No analysis was done to establish that the films and television programmes were substitutable or interchangeable.
- (iv) The Appellant was an association of producers, distributors, exhibitors and others involved in the film industry. In

paragraph 5.6 of the DG's report, which describes the role of the Appellant, reference is to the market power of the Appellant in film industry only. It had no control over the content telecast in the TV or over the decisions of the KTVA, which was an association of persons engaged in the television industry. The Appellant could not be held responsible for the actions of others and there was no material to show that, the Appellant acted in concert with others in regard to the television industry. The conclusion of the DG that, the responsibility of restriction of dubbed TV programme has been spearheaded by KTVA along with the Appellant and other associations, or the conclusion of the Commission that, the practices or activities of the Appellant restricted freedom of trade in the market, is backed by no evidence. Even the evidence of Zee Kannada which was discussed by the DG in his report, referred to acts of vandalism allegedly by activists who were members of KTVA and were agitated over telecast of dubbed programmes in Bangalore office of Zee Kannada. The Appellant had no role to play in the said event.

- (v) Even in regard to the film industry, its role was only advisory in nature. Further, the State of Karnataka was divided into three zones for the purpose of film production, distribution and exhibition viz. Mysore–Karnataka, Bombay–Karnataka

and Hyderabad–Karnataka. And the members of the Appellant were limited to Mysore – Karnataka region.

(vi) The reason for non-release of dubbed films in Kannada was not the alleged restriction imposed by the Appellant but the fact that, the State of Karnataka had multi-linguistic audience and as such films of foreign language including Hindi, English, Telugu, Tamil and Malayalam were released in Karnataka. The report of the DG, in paragraph 5.5.2, acknowledged this position. Thus, producers of other language films got its audience in the original language itself and the need for dubbing the films in Kannada did not arise. The Commission failed to apply the test of “rule of reason” to the justifications given by the Appellant.

(vii) The Appellant had stated before the DG and the Commission that, it had no objection whatsoever for dubbing other language films in Kannada. The Appellant had itself recommended ‘Koffi Shop’ to the Government of Karnataka, for grant of tax exemption as the film was stated by the producer of the film to be an original Kannada film. However, later the Department informed the Appellant that the tax exemption granted to ‘Koffi Shop’ would temporarily be withdrawn pending verification whether the film was an original film or a dubbed film. Therefore, the Appellant had requested the newspaper to withhold the publication of the

advertisement, as usually the advertisement contained a statement regarding tax exemption. The Appellant did not restrain the publication but merely asked the newspapers to withhold the same until the Department of Information took a decision in the matter. The Appellant had filed an affidavit before the Civil Court Bangalore stating that they were not interfering in the release of the film.

- (viii) There was no evidence to support the allegation of Asianet Communications Ltd. noted in the DG's report, that the Appellant had placed an embargo on dubbing movies or programmes of other languages into Kannada. Even the informant had only relied on media reports to allege that, the Appellant along with others was not allowing dubbed content. Sh. Aamir Khan, producer of the Television Show 'Satyameva Jayate' did not respond to the notice issued by the DG and his letters cannot be used against the Appellant. The Appellant had no role in withdrawal of the telecast of 'Satyameva Jayate'. The decision by the Suvarna Channel not to telecast the said programme was taken by them after discussion with KTVA and not the Appellant. The letter written by the Appellant to Mr. Aamir Khan in respect of the TV series 'Satyameva Jayate' clearly stated that, it was not concerned with the television industry.

- (ix) The minutes of the meeting held on 23.1.2012 had no reference to the dubbed content and had reference only to other language films. In this meeting, on which the Commission had placed reliance, the members merely discussed the problems faced by them and no decision as alleged was taken by the Appellant to restrict the release of other language films or dubbed films in the State of Karnataka. Further, all the acts of the Appellant alleged to be in the nature of imposing restrictions on the dubbed content were dated much prior to the said meeting.
- (x) The Commission erred in accepting the report of the DG without considering the serious objections raised by the Appellant against the report particularly when the DG had not examined other language producers or directors to verify whether restrictions as alleged by the informant were faced by them for making/releasing dubbed films.
- (xi) The bye-laws of the Appellant did not provide for any restriction on the dubbed films and the Commission erroneously attributed the stand of Respondent No. 4 to the Appellant which had justified banning of the dubbed version on the ground of right to protect the local language and culture and to protect the interest of the local artists.
- (xii) The Commission had erred in referring to the decision in Case No.16/2011 (Mr. Sajjan Khaitan vs. Eastern India

Motion Picture Association and Ors.) particularly when the facts and circumstances in both the cases were different and the matter was pending before the Hon'ble Supreme Court in Civil Appeal No. 6691/2014.

(xiii) The causal link between the agreement affecting the economic freedom of others and restricting of competition has not been established.

(xiv) The penalty imposed was not sustainable as the Appellant was not a profitable organisation and was exempted from payment of tax and was not earning any income from the business of film, production, distribution or exhibition or any other commercial activity in the film industry. The amounts received as shown in its financial statements were from collection of membership and rent accrued from the lease of its building.

13. Sh. Naveen Nath, learned advocate for the Commission underlined the fact that KTVA and KFPA had not filed appeals, thereby accepting the findings of the Commission and supported the impugned order by urging us to note the following:

(i) The Commission had based its findings on proper documentary record as also the evidence of various parties.

- (ii) The Appellant and KTVA jointly decided to ban telecast of 'Satyameva Jayate' as was evident from the statement of B. Suresha representing KTVA, recorded by DG on 11.4.2013, particularly responses to Question Nos. 16, 17, 18 and 28 which read as follows:

Q16. Whether there was any decision taken by KTVA relating to telecast of 'Satyamev Jayte' serial with Kannada language subtitles/para-synchronized version.

Ans. No, KTVA has not taken any decision with regard to this programme or any other programme. But the concerned channel Star Suvarna had invited many organizations like KTVA to give our opinion on this issue. All the organizations explained the prevalent practices in Karnataka with regard to such programmes. The representatives of the channels agreed and accepted to continue with the prevalent practices.

Q.17 I am showing you a copy of letter dated 16.04.2012 written by Mr. Anup Chandrasekaran, Business Head of Asianet Communications Ltd., addressed to KFCC mentioning that the intent to telecast Hindi

show 'Satyamev Jayte' with subtitles in Kannada language on their channel and requested for cooperation in this regard. This letter was forwarded by KFCC to KTVA vide their letter 18.04.2012. The KFCC in their reply filed to this office has also enclosed a letter dated 30.04.2012, written by KTVA to KFCC in this regard. I am further showing a letter written by KFCC to Mr. Amir Khan on 03.05.2012 mentioning that the decision relating to 'Satyamev Jayte' might have been taken by Suvarna Channel in accordance with the decision of the KTVA. Please explain the details of the letter issued by you on 30.04.2012 and also the discussions held within KTVA and with Suvarna Channel regarding the telecast of 'Satyamev Jayte'.

Ans. Primarily, I may state that the translated copies of the correspondence is not readily available with me since today happens to be a state holiday owing to Ugadi festival. I would request you to kindly enable me an opportunity to make the correspondence available to you by a later date.

In regard to the correspondence, the letter of Suvarna dated 16.04.2012 states specifically that the programme intended is a Hindi one with Kannada subtitles. As specifically stated above, the Kannada Sahitya Parishat does not prevent any programme with Kannada subtitles. The KTVA cannot by any stretch of imagination have any objection to the relay of any programme with Kannada subtitles. This is amply clear from the huge number of programmes which are presently being played all across Karnataka.

As regards the specific correspondence, the letter dated 16.04.2012, of Suvarna was apparently not directly sent to KTVA, but through KFCC. However, the letter of KTVA addressed to KFCC, dated 24.04.2012 signed by General Secretary, Shri Sanjeev Tagadur states the following :

“We are in receipt of your letter on 23.04.2012 i.e. Monday. As regards dubbing, we have constituted a committee. The members of the said committee are Shri V.H. Suresh, M.S. Ramesh, Ashok, Journalist Subramanya,

besides our office bearers. The subject of Satyamev Jayte was discussed with Suvarna at their office on 20.04.2012. Both parties i.e. the committee and the channel authorities have come to the conclusion that the said programme could not be telecast as proposed by it.”

As evidenced above, the members of the committee as formed by KTVA, were from KFCC (Mr. VH Suresh), Karnataka Film Directors Association (Mr. MS Ramesh); Karnataka Film Journalists Association (Mr. BN Subramanya), Karnataka Cine Workers & Technicians Union (Mr. Ashok). A separate photograph relating to the meeting in Suvarna Channels office on 20.04.2012 is already filed along with our submissions.

Q.18 *We are showing you the reply received from Asianet in response to this office notice vide letter 26.03.2013, which states inter-alia that KFCC & KTVA restricted dubbing of other languages and broadcasting in Kannada. It has also been mentioned in the letter that they apprehended violent protest from KFCC and*

KTA that is why they did not telecast 'Satyamev Jayte'. You are allowed to go through this letter and offer your comments.

Ans. As stated above, there is no restriction or embargo formal or informal in practice in Karnataka by KTVA on the issue of dubbing. More so, as has been stated even in the reply, subtitling and para-synchronizing have never been objected to. The averments made by Asianet are false and are the result of an afterthought.

Q.28 Whether the alleged decisions relating to opposition of any dubbed programme is taken by the KTVA in consultation with the other opposite parties in this case viz. KFCC, KFDA, KFPA, KCA, Karnataka Film Artists. Workers and Technicians Union.

Ans. There is a vigorous interaction in the interest of the entertainment sector between all these associations. However, their areas of operation are specifically mentioned and do not overlap each other.

- (iii) The Appellant received a letter from Suvarna Channel regarding 'Satyameva Jayate', and vide its letter dated 18.4.12 "sought the opinion of KTVA", establishing that both the association worked in tandem. Office bearer of the Appellant, Sh. V .H. Suresh was member of the dubbing Committee of KTVA
- (iv) The conduct of the Appellant in restraining release of 'Koffi Shop' is clearly established.
- (v) Minutes of the Emergency Executive Committee Meeting held on 23.1.2012 is ample primary evidence to prove the practice of the Appellant in restraining exhibition of dubbed content. The minutes suggest that, even after being aware of the action of the Commission in Case No.25/2010, anti-competitive conduct was deliberately continued. The phrase 'foreign language movies' denotes movies of other languages dubbed in Kannada language. The minutes also record the observations of the President of the Appellant that, protest for controlling non-Kannada movies together with artists should be held and all should join hands to save the Kannada film industry. The minutes state that, decision was taken to stage protest by observing bandh on 26th to control other language films. It was also decided that the Appellant "and all organ

associations of the industry together has (sic) to finally prevent menace of the other language movies”.

14. Shri Aniruddha Deshmukh, learned advocate for Respondent Nos. 1 and 2 supported the order of the Commission on the following grounds:

(i) Appellant is a parent organization of the film industry as recorded in the minutes of the meeting held on 23.01.2012 wherein, the Appellant described itself as a parent organization of the film industry and further stated that, the Central and the State Government had identified the Appellant as the parent organization. The contention that, its role was confined to a particular region of Karnataka was thus contrary to the evidence on record. Even in a statement before the DG, it was admitted that, Appellant's activities were in the State of Karnataka. The functioning of other organizations were closely intertwined with that of the Appellant.

(ii) The Appellant was the apex body for the entertainment industry, whether film or television within the State of Karnataka. Thus, the decisions were jointly taken. It is an admitted position that, the Business head of Asia Net (Suvarna Channel) and Aamir Khan producer of the

programme 'Satyameva Jayate' had written to the Appellant requesting for its cooperation for telecast of the said programme with Kannada subtitles. Therefore, the players in the TV industry approached the Appellant knowing well its influence and role in this industry. The Committee formed by KTVA regarding dubbing admittedly included Sh. V. H. Suresh, an office bearer of the Appellant. There was no compartmentalization of the film and TV associations as claimed by the Appellant. Film and television industry catered to the common man to whom a film and TV show was substitutable.

- (iii) Earlier also, the Appellant was found to be imposing illegal restrictions on the number of screens provided to the non-Karnataka films. The Appellant was held to be contravening the Act by the Commission vide its order dated 16.02.2012 in Case Nos. 25/2010, 41/2010, 45/2010, 47/2010 and 48/2010. The substantive appeal of the Appellant was dismissed vide order dated 03.01.2013 of this Tribunal in Appeal No. 72/2012, for non-compliance of certain directions. The Appellant was thus a serial offender and had been fined in the past for indulging in anti-competitive actions.

- (iv) The Appellant had time and again interfered in the release of dubbed content films and the producers of 'Koffi Shop' had demonstrated the manner in which the Appellant exercised its power to block the release of the dubbed content. In the affidavit filed on 26.03.2011 in regard to the film 'Koffi Shop' in a Court proceeding, the Appellant admitted having written letters to the newspapers and further that, "*as we received information that, the film in question was a dubbed one, the matter is referred to a Special Committee to enquire about the same.*" This proved that the Appellant was opposed to the dubbed content.
- (v) The third parties namely Asia Net Communications, Shri Geetha Krishnan and Zee Entertainment clearly attest to the conduct of the Appellant in preventing the release of the dubbed content.
- (vi) The Appellant by banning the production and exhibition of the dubbed content had directly affected the functioning of an efficient market.
- (vii) The Appellant had taken several blatantly anti-competitive decisions. The Appellant had not adduced any evidence to support its contention that it did not ban

the release of the dubbed content , while the Commission looked at the evidence on record and rightly found the Appellant guilty of contravention of the provisions of the Act.

- (viii) The Appellant's refusal to permit the production, exhibition and release of the dubbed content itself skewed the market in its favor as no prudent person would produce or exhibit a film which it knew would be blocked by the Appellant. The Appellant having participated in joint meetings to block and ban the dubbed content is obviously in agreement with other parties including the KTVA which had accepted the order of the Commission.
- (ix) The Case No. 16/2011 dealt with exactly the same issue of banning of the dubbed content of Mahabharat TV show. It was a matter of record that the Eastern India Motion Picture Association (EIMPA) never challenged the order of the Hon'ble Commission and the same was challenged only by the Coordination Committee and the order was set aside only qua the Coordination Committee and, therefore, the order became final against the EIMPA and the SLP No. 6691/2014 pertained only to the challenge

by the Commission to the exoneration of the Coordination Committee.

(x) The Emergency Executive Committee Meeting of the Appellant held on 23.01.2012, was convened in view of a report published in certain newspapers regarding allegations by the Producers Association that, the President and Secretary of the Appellant were providing opportunity to other language films by receiving payoff. In these minutes, there is a repeated reference to rules being violated by screening foreign language movies. The minutes also admitted that, the discussions were held with the office bearers of Andhra Pradesh Film Chamber of Commerce with a view to find permanent solution for controlling foreign language films. These Minutes are the primary evidence of the institutional bias against foreign language films which included dubbed films.

(xi) In the information, a copy of a report titled 'India Entertainment down South' prepared by FICCI in collaboration with Ernst & Young was filed. This report recognized that, typically rights for the release of the film on other platforms such as TV rights and home video rights were sold at the stage of selection of the distributor for the film and selection of the theatres for release. The

report also stated that, owing to the popularity of films and films based contents, TV networks were keen to acquire the telecast rights of the films. TV rights were an important avenue for producers to monetize their films. In regard to Kannada Film Industry specifically, C&S television rights compromised 25% of the revenue. The Appellant in concert with the KTVA restricted the telecast of dubbed films

- (xii) Admittedly, the letter written by the Business Head of Asianet Communication Limited was addressed to the Appellant. The Appellant forwarded the letter to KTVA and KTVA addressed the response to the Appellant. Such conduct indicated that, the matter of telecast of 'Satyameva Jayte' was discussed in the Dubbing Committee and the members of the said Committee included Shri V.H. Suresh, office bearer of the Appellant, who did not record any dissent while the decision was taken that, the programme with Kannada sub-titles would not be telecast. Thus, there was a threat perception created by the Appellant and the KTVA. The industry perception of the Appellant and the KTVA operating jointly is also borne out by the following submission of Asia Net

Communication in the letter dated 26.3.2013 addressed to the office of the DG :

“With regard to para 6, dubbing, though legally not banned, is informally restricted in Karnataka. Non-cooperation to this informal embargo had led to violent/adverse consequences in the past. Enclosed is the extract of a news item from Indiantelevision.com of how one regional channel had to bear the brunt of KTA’s ire for not adhering to this informal embargo when they telecasted Hindi footage in an independence day programme with commentary and sub-titles in Kannada In order to prevent any such mishaps, we are constrained to operate under this informal embargo by KFCC and/or KTA.”

15. In the rejoinder arguments, the learned counsel for the Appellant submitted that, the dubbing Committee was of KTVA alone and Shri V. H. Suresh acted in his personal capacity in the dubbing Committee and did not represent the Appellant. Further, it was contended that the DG and the Commission did not dispute Appellant’s explanation that letter to withhold publication of advertisement of ‘Koffi Shop’ was on account of action being considered by the Government to withdraw the tax exemption. It was also underlined that, all the material relied upon by the Commission

pertained prior to the year 2012. It was reiterated that the Asia Net Communication Limited had no evidence to support its allegations that there was informal embargo by the Appellant in telecast of the dubbed content.

16. The issues for determination arising from the arguments made on behalf of the Appellant, the Commission and the Informants are as follows:

1. Whether the Appellant being an Association of film producers, distributors and theatre owners was within the purview of Section 3 of the Act?
2. Whether the conduct of the Appellant was to be evaluated only in regard to the film industry in Karnataka or in regard to the television industry as well?
3. Whether there was sufficient evidence on record to establish that an 'agreement' was entered into, or practice carried on or decision taken in contravention of Section 3, read with Section 3(3) (b) of the Act?
4. Whether in regard to contraventions covered under Section 3 (3) (b) of the Act, appreciable adverse effect on competition needs to be proved?

16.1 These issues are discussed in seriatim in the following paragraphs and for this purpose it is apposite to extract Section 3 of the Act :

“Section 3 - Prohibition of agreements: Anti-competitive agreements

- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.*
- (2) Any agreement entered into in contravention of the provisions contained in subsection (7) shall be void.*
- (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which--*
 - (a) directly or indirectly determines purchase or sale prices;*
 - (b) limits or controls production, supply, markets, technical development, investment or provision of services;*
 - (c) shares the market or source of production or provision of services by way of allocation of*

geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

- (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:*

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.--For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

- (4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including ---*

(a) tie-in arrangement;

(b) exclusive supply agreement;

(c) exclusive distribution agreement;

(d) refusal to deal;

(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.--For the purposes of this sub-section,-

(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is

clearly stated that prices lower than those prices may be charged.

- (5) *Nothing contained in this section shall restrict--*
- (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under--*
 - (a) the Copyright Act, 1957 (14 of 1957);*
 - (b) the Patents Act, 1970 (39 of 1970);*
 - (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);*
 - (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999),*
 - (e) the Designs Act, 2000 (16 of 2000);*
 - (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);*
 - (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.”*

16.2 In order to interpret Section 3 of the Act, we need to note the following definitions of the terms ‘agreement’, ‘enterprise’ and ‘person’ as provided under Section 2 of the Act:

“2(b) "agreement" includes any arrangement or understanding or action in concert:--

(i) whether or not, such arrangement, understanding or action is formal or in writing; or

(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;”

2(h) “enterprise” means

"enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation.--For the purposes of this clause,--

- (a) *"activity" includes profession or occupation;*
 - (b) *"article" includes a new article and "service" includes a new service;*
 - (c) *"unit" or "division", in relation to an enterprise, includes-*
 - (i) *a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;*
 - (ii) *any branch or office established for the provision of any service;*
- “2(l) *"person" includes--*
- (i) *an individual;*
 - (ii) *a Hindu undivided family;*
 - (iii) *a company;*
 - (iv) *a firm;*
 - (v) *an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
 - (vi) *any corporation established by or under any Central, State or Provincial Act or a Government company as defined in [section 617](#) of the Companies Act, 1956 (1 of 1956);*
 - (vii) *any body corporate incorporated by or under the laws of a country outside India;*

- (viii) *a co-operative society registered under any law relating to cooperative societies;*
- (ix) *a local authority;*
- (x) *every artificial juridical person, not falling within any of the preceding sub-clauses;*

16.3 The Appellant is admittedly an association of producers, distributors and exhibitors. These producers, distributors and exhibitors are undeniably persons as defined in Section 2 (l) of the Act. Further, these persons are certainly enterprises being engaged in activities as encompassed in Section 2(h) of the Act. The Appellant is, therefore, association of persons and its constituent members are enterprises operating in the same market. Once having thus determined the form of the Appellant, we have to see whether the conduct of this association of enterprises can be evaluated under Section 3 of the Act.

16.4 We are of the view that, any action by the Appellant is a joint action of its members with the association, as also joint action *inter-se* members, constituting an agreement entered into, practice carried on or decision taken by which can be subjected to appraisal to ascertain as whether there is any contravention of Section 3 of the Act.

16.5 This Tribunal has vide order dated 17.05.2013 in the case of Motion Pictures Association vs. Reliance Big Entertainment Pvt. Limited in Appeal No. 69/2012 confirmed that, a decision by the 'association of enterprise' or 'association of persons' was covered under Section 3(3)(b) of the Act and that persons forming the association were certainly in the trade of identical goods or services and that association was a representative association of its members. We had also agreed in that case, that the rules and practices of the individual association would amount to an agreement between the association and members as also between *inter-se* members, particularly in view of the broad definition of the word 'agreement' in the Act.

16.6 Further, a similar issue of telecast of dubbed version of Mahabharat opposed by an association called Eastern India Motion Picture Association (EIMPA) and the Coordination Committee of Artists and Technicians of West Bengal Film and Television (Co-ordination Committee) was considered by the Supreme Court in Civil Appeal No. 6691 of 2014 in the case of Competition Commission of India vs. Co-ordination Committee of Artists and Technicians of W.B. Film and Television and others and the applicability of Section 3 of the Act to an association of enterprises was decided by the Hon'ble Supreme Court vide order dated March 7, 2017 in the said case, in the following words:

“.....The Coordination Committee (or for that matter even EIMPA) are, in fact, association of enterprises (constituent members) and these members are engaged in production, distribution and exhibition of films. EIMPA is an association of film producers, distributors and exhibitors, operating mainly in the State of West Bengal. Likewise, the Coordination Committee is the joint platform of Federation of Senior Technician and Workers of Eastern India and West Bengal Motion Pictures Artistes Forum. Both EIMPA as well as the Coordination Committee acted in a concerted and coordinated manner. They joined together in giving call of boycott of competing members i.e. the informant in the instant case and, therefore, matter cannot be viewed narrowly by treating Coordination Committee as a trade union, ignoring the fact that it is backing the cause of those which are ‘enterprises’. The constituent members of these bodies take decision relating to production or distribution or exhibition on behalf of the members who are engaged in the similar or identical business of production, distribution or exhibition of the films. Decision of these two bodies reflected collective intent of the members. When some of the members are found to be in the production, distribution or exhibition line, the matter

could not have been brushed aside by merely giving it a cloak of trade unionism. For this reason, the argument predicated on the right of trade union under Article 19, as professed by the Co-ordination Committee, is also not available.”

The above quoted conclusions of the Supreme Court are clearly applicable in regard to the Applicant too.

16.7 In view of the above discussion we have no hesitation in holding that, the conduct of the Appellant can be examined to assess whether there was any contravention of Section 3 read with Section 3(3) (b) of the Act.

16.8 The second issue is the determination of the market in which the conduct of the Appellant is to be seen. We find no merit in the claim of the Appellant that geographically, its role was confined to only part of Karnataka. We agree with the learned counsels for the Commission and the Informants that, the submissions of the Appellant before the DG about its influence, and the fact that Film Certification and Censor Board and Karnataka State Information Department recognised the Appellant as representative of the entire Kannada film industry and certificates for tax exemption of Kannada movies etc., were generally granted on the recommendations of the Appellant, are sufficient evidence to prove that the sway of Appellant

extended to the entire state of Karnataka. Further, we do not agree with the Appellant that Film and Television industry were two entirely different product markets. The product market comprises of all products or services which are regarded as substitutable by the consumer. The suppliers of these products or services compete to get the consumers. Films and Television are products of the entertainment industry. The films are not only exhibited in theatres but are also telecast on TV channels and film rights get sold to TV channels. As rightly pointed out by the learned counsel for the Informants, the television industry is also a route to monetize films. Films exhibited in the theatres and films telecast through the medium of television are certainly substitutable. Similarly, television shows can be adapted to a film format. Consumers seek entertainment and both films and television industry offer products to entertain, and consumers can make their choices based on their prices, characteristics etc. Further, in Civil Appeal No. 6691 of 2014 (*ibid*) while examining the issue of opposition of telecasting of serial Mahabhartar in Bangla, after dubbing it from the originally produced Hindi language, the Supreme Court held that the sweep of the action is to be considered while determining the market. The court emphasized the width of the effect of the opposition to the dubbed content led by the Co-ordination Committee. In that case it held that, the effect was not limited to the telecast of the television serial and

the market was accordingly held to be the entire film and television industry of West Bengal.

16.9 In the present case, the Informants had alleged restriction of the dubbed content both in film and television industry. Considering that the products of these industries are substitutable and any ban on dubbed content impacts both, we do not agree with the Appellant that its conduct only in regard to the film industry is to be seen.

16.10 That brings us to the issue as to whether there was an agreement entered into, or practice carried on, or decision taken in contravention of Section 3 of the Act. The Commission has applied Section 3(3)(b) of the Act, in this case. The said provision, *inter-alia*, creates a presumption that an agreement, or practice carried on, or decision taken, which limits or controls production, supply, markets, technical development, investments or provision of services has an appreciable adverse effect on competition and is to be treated as a prohibited agreement in terms of Section 3(1) of the Act. The Commission has referred to the interference by the Appellant in release of 'Koffi Shop' and in telecast of TV programme 'Satyamev Jayate' as also the minutes of the Emergency Executive Committee Meeting of the Appellant held on 23.01.2012, to come to the conclusion that the Appellant was involved in the practice of

preventing the release/telecast of dubbed films/TV serials in the State of Karnataka.

16.11 In regard to the film 'Koffi Shop', it is an admitted position that the Appellant did write the letter dated 4.3. 2011 addressed to the newspapers requesting them not to publish the advertisement pertaining to 'Koffi Shop', until they received instructions from them. In the Appeal Memo, while detailing facts, the Appellant's explanation for issue of such a letter is that *"The said letter was issued by the Appellant in respect of the film 'Koffi Shop' owing to the temporary withdrawal of tax exemption by the Department of Information, Government of Karnataka until it was verified if the film 'Koffi Shop' was an original Kannada film or a dubbed version as if the tax exemption is not accorded by the Government of Karnataka, the Exhibitors will have to bear the brunt of paying the tax money from their own pockets."* The same explanation was reiterated by the learned Counsel of the Appellant during the course of arguments before us. However, the letter of Department of Information, Government of Karnataka ordering temporary withdrawal of tax exemption in the record is dated 30.04.2011. When we pointed out to the Appellant that its letter to the newspapers is dated 4.3.2011 and thus predates letter of Government of Karnataka, it sought permission to file additional documents to shed some light on the sequence of the events. The I.A. No. 08/2017 was thereafter filed on 30.1.2017

for placing additional documents marked as Annexure A to H, on record. 'Annexure A' is a letter dated 18/24.01.2011 addressed by the Government of Karnataka (Department of Information), to the Director, Blue fox Cinemas. 'Annexure B' is a letter dated 28.03.2011 by the Government of Karnataka, Commercial Tax Department addressed to the Appellant seeking details of producers and exhibitors of various cinemas including 'Koffi Shop'. 'Annexure C' is a letter dated 18.04.2011 by the Appellant to the Commercial Tax Department giving the names and addresses as sought vide their above mentioned letter dated 28.03.2011. 'Annexure D' is a letter dated 30.04.2011 by the Government of Karnataka, (Department of Information) informing the Appellant of temporary withdrawal of Entertainment tax exemption to 'Koffi Shop'. 'Annexure E' is the letter dated 30.04.2011 of the Government of Karnataka, Department of Information addressed to the Blue fox Cinema, informing them of the reasons for ordering temporary withdrawal of the Entertainment Tax Exemption Certificate, with a copy to the Appellant. 'Annexure F' is a letter by Secretary to Government of Karnataka, Department of Kannada, Culture and Information, dated 25.8.2011 addressed to the Department of Information. 'Annexure G' is the translation of missing portion of the minutes of the Emergency Executive Committee Meeting held on 23.01.2012. 'Annexure H' is an undated letter by Blue fox Cinema addressed to the Director, Department of Information, Bangalore, bearing a stamp dated 31.3.2011.

16.12 The Counsel for the Informants opposed taking the documents on record on the ground that, authenticity of the documents issued by the third parties, which were also not public documents, had not been affirmed on affidavit by the authors and these cannot be taken into consideration by the Tribunal as evidence. In this regard he placed reliance on our order in I.A. No. 58/2016 in Appeal No. 50/2014 dated 26.04.2016. He also stressed that, no reason has been given as to why these were not placed before the Commission.

16.13 We agree with the learned counsel that, the documents at Annexures A, D, F and H, not affirmed by the authors as to their authenticity, cannot be taken on record. Annexures B and C are not relevant to the issue posed by us as to how the Appellant could assume withdrawal of tax exemption and ask newspapers not to publish advertisements on 4.3.2011, while the Government Order withdrawing tax exemption was issued on 30.4.2011. Annexure E is dated 30.4.2011 and cannot explain conduct of 4.3.2011. Annexure G is a missing page of minutes of the Emergency Executive Committee Meeting held on 23.01.2012, but since the Informant, the Commission and the Appellant are not relying on the recording on this page, we see no reason to take the same on record.

Accordingly, the additional documents filed vide I.A. No. 08 of 2017, in this appeal, are not taken on record.

16.14 In our view, the evidence in the form of letter to the newspapers, submissions of producer/director of 'Koffi Shop' reproduced in paragraph 5 (ix) of this order, clearly establishes the conduct of the Appellant in restraining the screening of the dubbed content. Such conduct is pursuant to its decision and practice of imposing of restrictions on the dubbed films as manifest in the minutes of Emergency Executive Committee Meeting held on 23.01.2012, to which repeated reference was made by the learned counsels for the Commission and the Informants. The minutes show that the Appellant and the members were jointly and systematically opposing the dubbed content and even decided to adopt agitational path as is recorded in the following extract of the minutes:

“Secretary Sri Sa. Ra. Govindu addressed and stated that, to discuss in total in the matter of other language movies, it is appropriate to observe that, no inconvenience is caused to the movies to be released on 26th and by observing closure (bundh) of the entire film industry in the future days, we could proceed to control other language movies. On seeking co-operation from everybody in this regard, there was dualistic stand in the meeting. Thereafter, consent was expressed for

observing closure (bundh) after discussing with the distributors of the movies to be released on 26th. Based on this the Film chamber of Commerce arrived at a decision as appropriate to stage protest by observing closure (bundh) on 26th to control other language movies. It is learnt that, hardship is caused to the Kannada movies due to other language movies, in this matter, the Film Chamber and all organ – associations of the industry together has to finally prevent menace of the other language movies. It was decided in the meeting to hold meetings in this regard in future and to formulate regulations in this regard.”

(Translation provided by the Appellant)

The argument that the phrase ‘foreign language movies’ in the minutes did not mean movies dubbed in Kannada is specious. The matter deliberated in the meeting was screening of foreign language films which included all films in languages other than Kannada and at many places in the minutes the words ‘other language movies’ have been used. These films in ‘language other than Kannada’ would include films with content dubbed in Kannada.

16.15 This restraint on dubbed content is consequent to an understanding and an arrangement of the Appellant with its constituents and of its constituents *inter se*. The statements of Shri

Geetha Krishna and Asia net Communications extracted in paragraphs 5 (ix) and 14 (xii) respectively of this order, established the role of the appellant in imposing such ban on dubbed films.

16.16 We also find no merit in the claim of the Appellant that it had no say in the matters concerning the Television industry. There is sufficient evidence brought on record to show that KTVA and the Appellant operated jointly to prevent the telecast of the serial 'Satyameva Jayate'. The fact that, Mr. Aamir Khan, who was the producer of the programme and the channel which was proposing to telecast the programme approached the Appellant and not KTVA directly, indicates the perception of the players in the market of television / film industries as to which entity can provide clearance for telecast of dubbed content. There are admittedly common members between the two associations and Shri V.H. Suresh, an office bearer of the Appellant was on the Dubbing Committee of KTVA which took a decision to oppose the telecast of dubbed content. If the Appellant had no role in the matter, it could have informed Shri Aamir Khan of not having any authority in the matter or at best forwarded the letter to KTVA for action as considered appropriate. Instead, it sought 'opinion' from KTVA, signifying its involvement in the matter as is obvious from its *letter dated 18.04.2012 which reads as follows:*

"Asianet Communications Limited, Suvarna channel, have on 16-4-12, requested in a letter that a programme

named 'Satyameva Jayate', be permitted to be telecast with Kannada sub-titles. A copy of that letter has been attached for your reference.

The Film Chamber solicits your opinion in this issue."

(Translation provided by the Appellant)

16.17 The market power of the Appellant in regard to the dubbed content whether in films or TV industry, is also demonstrated by the participation of Shri V. H. Suresh, its Secretary in the deliberations of the Dubbing Committee, which decided to oppose the telecast of 'Satyameva Jayate'. The claim of the Appellant that Sh. V. H. Suresh did not represent the Appellant and participated in his individual capacity is contrary to the submissions made by Shri B Suresha representing KTVA, in his statement before the DG. In response to Question No. 17 reproduced in paragraph 13 of this order, he had explained the constitution of the Dubbing Committee as being from KFCC (Mr. VH Suresh), Karnataka Film Directors Association (Mr. MS Ramesh); Karnataka Film Journalists Association (Mr. BN Subramanya), Karnataka Cine Workers & Technicians Union (Mr. Ashok).

16.18 We also cannot ignore the submissions of Asianet Communication in the letter dated 26.3.2013 addressed to the office of the DG, as extracted in paragraph 14(xiv) of this order asserting

that they were constrained to operate under the “informal embargo by KFCC and/or KTA”. This letter is indicative of the influence of the Appellant in the Television industry, as perceived by a participant in the said industry.

16.19 Further, Sh. Geetha Krishna, with his submissions before DG, through his letter dated December, 2012 on the letter head of Blue fox Cinema enclosed a letter of Zee Entertainment Enterprises Ltd. dated 28.7.2011, which shows the involvement of the Appellant in matters concerning TV industry. In this letter, it was, *inter alia*, stated by Zee enterprises that Zee Kannada had entered into an agreement with Blue fox Cinema for acquisition of “Koffi Shop” and, further that *“Please be informed that a penal interest of Rs.479,486 was deducted from the final payment strictly in conformity with the provisions of the agreement due to late delivery of the said film.*

You are fully aware that the Karnataka Film Chamber of Commerce had requested us not to release the payment due to you. You will appreciate that we released the payment even at the risk of antagonising the Chamber, which is the apex film body of the State.”

This is another instance of the association of the Appellant with the matters concerning the television industry.

16.20 Holistic appreciation of events detailed above leads to the inevitable conclusion that the Appellant and KTVA acted in concert to counter dubbed content.

16.21 The issue as to whether agreement, practice or decision to restrain dubbed content is violative of Section 3 of the Act is not *res integra*. Supreme Court in Appeal No 6691 (*ibid*) has held as follows:

“One can clearly view that prohibition on the exhibition of dubbed serial on the television prevented the competing parties in pursuing their commercial activities. Thus, the CCI rightly observed that the protection in the name of the language goes against the interest of the competition, depriving the consumers of exercising their choice. Acts of Coordination Committee definitely caused harm to consumers by depriving them from watching the dubbed serial on TV channel; albeit for a brief period. It also hindered competition in the market by barring dubbed TV serials from exhibition on TV channels in the State of West Bengal. It amounted to creating barriers to the entry of new content in the said dubbed TV serial. Such act and conduct also limited the supply of serial dubbed in Bangla, which amounts to violation of the provision of Section 3(3)(b) of the Act.”

16.22 Similarly, the fourth issue regarding appreciable adverse effect on competition has been settled by the Supreme Court in the aforesaid case by affirming that once an agreement falls under Section 3(3)(b) of the Act, appreciable adverse effect on competition is presumed. The *ratio decidendi* on this issue is as follows:

“Sub-section (3), with which we are directly concerned, stipulates four kinds of agreements which are presumed to have appreciable adverse effect on competition. Therefore, if a particular agreement comes in any of the said categories, it is per se treated as adversely effecting the competition to an appreciable extent and comes within the mischief of sub-section (1). There is no further need to have actual proof as to whether it has caused appreciable effect on competition.”

16.23 The Appellant has not addressed any argument to challenge the quantum of penalty. However, penalty has been claimed to be unsustainable on the ground that it was not a profitable organisation and enjoyed exemption from payment of tax under Section 80 G of the Act, and its income was not from the business of film production, distribution or exhibition, but only from collection of membership and rent accrued from the lease of its building.

16.24 We note that the Commission has levied the penalty with reference to the receipts of the Appellant (termed as income), as authorized under Section 27(b) of the Act. The profitability or tax exempt status of a person contravening provisions of Section 3 of the Act, are not the factors to be considered for determining the average of the turnover i.e. receipts referred in Section 27(b) of the Act, with reference to which the penalty is to be calculated. Further, since the conduct of the Appellant resulting in contravention of Section 3 of the Act, is traced to the very existence of the Appellant as an association of enterprises, its receipts are the appropriate basis for determining the quantum of penalty. We, therefore see no reason to interfere in the penalty imposed.

17. In the result, the Appeal is dismissed. I. A. No. 8 of 2017 is also dismissed.

(Anita Kapur)
Member

(Rajeev Kher)
Member

10th April, 2017