

(2024) 01 CCI CK 0003

Competition Commission Of India

Case No: Case No. 38 Of 2022

Mr. Shine P.Sasidhar, Advocate

APPELLANT

Vs

Kerala State Road Transport
Corporation

RESPONDENT

Date of Decision: Jan. 22, 2024

Acts Referred:

- Competition Act, 2002 - Section 4, 19(1)(a), 26(2), 33
- Motor Vehicles Act, 1988 - Section 67(1), 67(2), 100(2)

Hon'ble Judges: Ravneet Kaur, Chairperson; Anil Agrawal, Member; Sweta Kakkad, Member

Bench: Full Bench

Judgement

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

1. The present Information has been filed by Mr. Shine P. Sasidhar ("**Informant**") under Section 19(1)(a) of the Competition Act, 2002 ("**Act**"), alleging contravention of provisions of Section 4 of the Act by Kerala State Road Transport Corporation ("**KSRTC**").

Facts of the case, as per Information

2. The Informant is stated to be a practicing lawyer in Delhi.

3. KSRTC is an autonomous corporation established by the Government of Kerala under the Road Transport Corporations Act, 1950 to operate buses within and outside the State of Kerala.

4. It has been stated that in exercise of powers conferred under Section 100(2) of Motor Vehicles Act, 1988, the Government of Kerala vide Notification bearing No. GO(P) No.42/2009/Tran. dated 14.07.2009, approved a scheme in the public interest for providing an efficient, adequate, economical and properly coordinated passenger road

transport service in relation to 31 routes all over Kerala to be run by the State Transport Undertaking, i.e. KSRTC. Thereafter, the said scheme was modified by the Government of Kerala vide Notification bearing No. GO(P) No.08/2017/Tran. dated 23.03.2017 to state that the passenger road transport service should be run and operated exclusively by KSRTC.

5. It has been stated that the Nilakkal-Pamba route which is used by the pilgrims to reach Sabarimala temple falls under the above-mentioned scheme. Further, the parking facility at Nilakkal is also included in the said notification and no other carriages are permitted.

6. It has been stated that during the main season beginning from November until January, KSRTC provides additional bus services from various depots in Kerala, as part of special services. These services are availed by approximately 1.5 to 2.5 lakhs pilgrims who visit Sabarimala temple during the said period. It has been alleged that these pilgrims are charged fares for bus services which are more than the normal or standard rates. The Informant has also stated that the actual travel distance from Nilakkal to Pamba is 18km; however, KSRTC charges from its Depot to the end point which is equivalent to 22km.

7. It has also been stated that no contract vehicles are allowed to drop their passengers at Pamba since they are not permitted to go beyond Nilakkal. Accordingly, passengers are dependent on the bus service provided by KSRTC to travel to Pamba. It has been stated that all the passengers after their visit to the temple come back to Pamba to avail the bus service provided by KSRTC to go back to Nilakkal.

8. Based on the above, the Informant has alleged that KSRTC is in a dominant position and has contravened the provisions of Section 4 of the Act.

9. The Informant has sought relief against KSRTC for its abusive conduct. The Informant has also sought interim relief under Section 33 of the Act to the extent of restraining KSTRC from operating buses on the Nilakkal-Pamba route during the season.

10. The Commission considered the matter on 16.05.2023 and decided to seek comments/response as well as certain additional information from the Government of Kerala and KSRTC, to be filed within four weeks. The Informant was also directed to file its response to the comments/response filed by the Government of Kerala and KSRTC within two weeks thereafter.

Submissions of Parties

11. KSRTC and the Informant filed their comments/response on 29.08.2023 and 23.10.2023, respectively.

12. KSRTC, in its response, has, **inter-alia**, stated that Government of Kerala, in exercise of power conferred under Section 100(2) of the Motor Vehicles Act, 1988, issued a scheme of nationalization in respect of 31 routes in the State of Kerala. It has been submitted that the entire Sabarimala route is covered under various Nationalization schemes since decades. It has been submitted that the Informant has no **locus standi** to challenge operation of KSRTC since the operation of special/additional services at Sabarimala is in accordance with the provisions of the nationalization scheme which is published and approved as per the provisions of the law, to provide effective, economical and cheaper means of transport to the general public at large. It has been stated that the Sabarimala festival is a special occasion which needs extra expenditure for arranging adequate services and other facilities to the pilgrims and that extra charge is in accordance with a notification dated 19.05.2014 issued by the Government of Kerala. As regards higher fares charged for Nilakkal-Pamba route, KSRTC has submitted that it is as per the above notification. Further, KSRTC should ideally charge Rs.53/- for Low Floor Non-AC buses and Rs.102/- for Low Floor AC buses, but is only charging Rs.50/- for Low Floor Non-AC buses and Rs.80/- for Low Floor AC buses. The Government of Kerala, in exercise of the power conferred by sub-section (1) and (2) of Section 67 of the Motor Vehicles Act, 1988 issued a notification vide G.O.(P) No. 17/2022/Tran. dated 30.04.2022 for revising fares of the stage carriage in the State of Kerala and fare is collected in accordance with the said notification. In addition, it has also been stated that the fares fixed in the above notification is applicable to both nationalized and non-nationalized routes and there is no separate fare system for the two categories of routes.

13. The Informant filed its rejoinder dated 12.10.2023 to the response filed by KSRTC. In the said rejoinder, while refuting the submissions of KSRTC, the Informant, has **inter-alia**, stated that at present 10 to 15 million pilgrims visit Sabarimala from across the world every year and KSRTC's facilities are inadequate to cater to the needs of these pilgrims. The Informant has further stated that this pilgrimage is not a festival rather a seasonal yatra similar to Amarnath Yatra, Char Dham Yatra. While declaring it as a festival, KSRTC is charging 30 % additional on normal charge, which also comes under the preview of abuse of dominant position. With regards to the calculation of fares, the Informant has stated that the same has been done in a wrong way. It has been further stated that KSRTC vehicles are running in the Ghat section and national pilgrim area without insurance coverage of the pilgrims.

Analysis of the Commission

14. The Commission has perused the Information and other material available on record. It appears that the Informant is primarily aggrieved by the exclusivity granted to KSRTC by the Government of Kerala by way of notification for operating buses on the Nilakkal-Pamba route to reach Sabarimala temple as well as charging of exorbitant

fares from passengers on the said route. This has been alleged to be in contravention of provisions of Section 4 of the Act.

15. With regard to grant of exclusivity to KSRTC for operating on certain routes, the Commission notes from the submission of KSRTC that the same has been done by the Government of Kerala, in exercise of powers conferred under the provisions of the Motor Vehicles Act, 1988 for providing adequate, economical and properly coordinated passenger road transport service in the public interest. Such grant of exclusivity to KSRTC is a policy decision of the Government of Kerala and may not be considered as anti-competitive in the facts and circumstances of this case. With regard to the allegation of charging excessive fares, the Commission notes that the fares are fixed by KSRTC in accordance with the Notification dated 30.04.2022. The Commission also notes that the said notification is applicable to both nationalized and non-nationalized routes and has provisions for enhancement of rate of fares for: (a) Ghat roads and; (b) during the festival occasions as mentioned in the schedule appended to the said notification. The Commission further notes that the fares on per kilometer basis are being charged on a uniform basis as per the said notification by both public and private operators.

16. Against the aforesaid backdrop, the Commission is of the opinion that since there appears no discernible competition concern in the matter, it may not be appropriate to delve into allegations of abuse of dominant position.

17. In view of the foregoing, **prima-facie**, no case of contravention of Section 4 of the Act is made out in the facts, circumstances and allegations levelled in the case and the matter is ordered to be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant of relief as sought under Section 33 of the Act arises in the matter.

18. The Secretary is directed to communicate to the Parties, accordingly.