

(2018) 01 DEL CK 0119

Delhi High Court

Case No: 5598 of 2016

KUMARAN & ANR

APPELLANT

Vs

CENTRAL BOARD OF
FILM CERTIFICATION
& ANR

RESPONDENT

Date of Decision: Jan. 3, 2018

Acts Referred:

- Cinematograph Act, 1962, Section 5(b)

Hon'ble Judges: Sanjeev Sachdeva

Bench: Single Bench

Advocate: Ashim Sood, Dhruv Sood, Vikram Jetly, Shraddha Bhargava

Final Decision: Disposed

Judgement

1. The petitioner has filed the present petition impugning the order dated 16.10.2015 of the Central Board of Film Certification (hereinafter referred to as the Board) and the order dated 04.04.2016 of the Film Certification Appellate Tribunal (hereinafter referred to as the FCAT), refusing to grant certificate for exhibition of the film "Battle of Banaras" to the petitioner.

2. The petitioner made an application seeking certification of the film for public exhibition to the Central Board of Film Certification. The Central Board of Film Certification has refused to grant certificate for exhibition of the film citing the following reasons:-

"Reasons for "Certificate Refused" to the film The theme is full of hate speech/inflammatory speeches given by all the leaders falls on different caste,

communal talks, derogatory remarks and of release may cause communal disharmony, unrest and disturbance. Hence refused for certification under guidelines sections 2(xii), (xvii), (xiii), (xviii) and 3 (i)."

3. Aggrieved by the said decision, the FCAT, vide impugned order dated 04.04.2016, rejected the appeal of the petitioner, inter-alia, holding as under:-

"4. After having viewed the film and having heard the parties, we are of the opinion that the CBFC was justified in refusing to grant certificate for exhibition of the film for the reasons that the theme of the film was full of hate/inflammatory speeches given by all the leaders of the political parties and it tries to divide people on caste and communal lines and derogatory remarks have been made against individuals. The release of the film may cause not only communal disharmony but also disharmony amongst the members of different castes and communities. It clearly violates the guidelines 2(xii), (xiii),(xvii), (xviii) and 3(i) of the guidelines issued for certification for films of public exhibition. The appeal is accordingly dismissed."

4. The main plank of refusal to grant certificate for exhibition of the film is that the theme of film is full of hate speech/inflammatory speeches given by the leaders of the political parties and has tried to divide people on caste and communal lines and derogatory remarks have been made against the individuals and further that the release of the film may cause communal disharmony and disharmony amongst the members of different caste and communities.

5. Aggrieved by the said decision, the petitioner has filed the present petition. Under orders of the Court, screening of the film was also organized by the petitioners. The film was viewed by the Court in the presence of the counsels for the parties, representatives of the petitioners as well as officers of the respondents.

6. The legal position with regard to certification of the films can be summarised in the following principles which emerge from various judgments:-

i. [Films are regarded as constituting a powerful medium of expression.

ii. Artists, writers, play rights and filmmakers are the eyes and the ears of a free society. They are the veritable lungs of a free society because the power of their medium imparts a breath of fresh air into the drudgery of daily existence.

iii. Their right to communicate ideas in a medium of their choosing is as fundamental as the right of any other citizen to speak.

iv. Our Constitutional democracy guarantees the right of free speech and that right is not conditional upon the expression of views, which may be palatable to mainstream thought. Dissent is the quintessence of democracy. Hence, those who express views, which are critical of prevailing social reality, have a valued position in the constitutional order.

v. Dissent in all walks of life contributes to the evolution of society. Those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon.

vi. Films, which deal with controversial issues necessarily, have to portray what is controversial.

vii. The director has available to him all the tools of trade. Satire, humor and the ability to shock each one out of the mundane levels of existence is what embellishes are forms.

viii. The Constitution protects the right of the artist to portray social reality in all its forms. Some of that portrayal may take the form of questioning values and mores that are prevalent in society. The power of literature lies in the ability of the writer to criticise commonly held beliefs and ordinary human foibles. Equally, a writer, producer and director of a film have the discretion to depict the horrors of social reality.

ix. It is impermissible ground to reject the certification of a film on the ground that certain characters and incidents are identifiable with actual personalities and individuals. The protection of the Constitution does not extend only to fictional depictions of artistic themes. Artist, filmmakers and play rights are

affirmatively entitled to allude to incidents, which have taken place, and to present a version of those incidents, which according to them represents a balanced portrayal of social reality. No democracy can countenance a lid of suppression on events in society.

x. Stability in society can only be promoted by introspection into social reality, however grim it be.

xi. The constitutional protection under Article 19(1)(a) that a filmmaker enjoys is not conditioned on the premise that he must depict something, which is not true to life. The choice is entirely his. Those who hold important positions must have shoulders, which are broad enough to accept with grace a critique of themselves, critical appraisal is the cornerstone of democracy and the power of the film as a medium of expression lies in its ability to contribute to that appraisal.

xii. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil.]¹

xiii. [The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good.

xiv. The requirements of art and literature include within themselves- a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man moral man begins to feel embarrassed or disgusted at a 1 F.A.Pictures International Vs. CBFC and Anr. AIR 2005 BOM 145 naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, it cannot be helped.

xv. Ideas having redeeming social or artistic value must also have importance and protection for their growth. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of

sex designed to play a commercial role by making its own appeal. This draws in the censors scissors.]²

xvi. [Once the test is that the work must be seen as a whole and viewed in entirety, then, it will not be permissible to pick and choose isolated scenes or events or characters. It will not be permissible to pick up some lines from some scenes and few dialogues and read them out of context.

xvii. It is open to a creative person to choose a particular setting and backdrop and move his story forward with due regard to the same. It is entirely for him to choose the underlying theme and story line. The creative freedom envisages presentation of certain works as per the choice of the maker or writer. None can dictate to him as to how he should produce or make his film and what should be the contents thereof.]³

xviii. [Too much need not, we think, be made of a few swear words the like of which can be heard every day in every city, 2 K.A.Abbas Vs. Union of India & Another: (1970) 2 SCC 780 3 Phantom Films Private Limited Vs. The Central Board of Certification, 2016 (4) ARB 593 town and village street. No adult would be tempted to use them because they are used in this film.

xix. Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene.]⁴

7. The petitioner has explained the theme of the film contending that Kamal Swaroop, the director of the Film, is a national award-winning director. The Film itself is a documentary chronicling the election campaign for the Banaras Lok Sabha constituency in the 2014 General election. The film depicts the campaigns of the wide arena of candidates that stood for election; the viewpoints of various voters, stakeholders and groups; and sets the campaign against the larger character of the mystical holy city of Banaras. The Film is unpartisan. A viewing of the Film and a reading of its script clearly shows that there is no language or scene contained therein that is either defamatory, derogatory, abusive or likely to offend or affect public order, decency or morality or the sovereignty or integrity of India.

8. After having viewed the film, I am of the view that the broad general finding

rendered by the Board as well as FCAT that the film is full of hate speech and inflammatory speeches is not sustainable. The film merely reproduces the speeches made by various leaders and 4 Bobby Art International etc. Vs. Om Pal Singh Hoon & Others : AIR 1996 SC 1846 party candidates at the time of the general elections. It is not the case of the Board or the FCAT that what the petitioner has sought to project is an incorrect depiction or portrayal of what has transpired. It is not the case of the respondent that what the petitioner has projected is not extract of the speeches of the candidates. The petitioner has tried to project through the film the views and extracts of speeches of various candidates, party workers or party leaders of different parties. Viewing the film as a whole, one does not get an impression that the theme is full of hate speech or inflammatory speeches. One does not get an impression that the film tries to divide people on caste or communal lines. Though the some words used or some portion of the film may be in conflict with the guidelines framed by the Central Government in terms of Section 5(B) of the Cinematograph Act, 1962 (hereinafter referred to as the Act), however, neither the Board nor the FCAT has clearly spelt as to which part or dialog of the film would violate the guidelines.

9. In view of the above, as well as the principles enunciated hereinabove, I am of the view that the order dated 16.10.2015 of the Board and the order dated 04.04.2016 of the FCAT are not sustainable. The impugned orders are accordingly quashed. The matter is remitted to FCAT to re-examine the film of the petitioner in terms of the principles enunciated hereinabove and pin point the scenes or dialogs which may be in conflict with the Guidelines for Film Certification framed under Section 5(B) of the Act. The FCAT shall pass appropriate speaking order within a period of four weeks from today.

The writ petition is disposed of in the above terms. There shall be no orders as to Costs.