

Mufeeda Arafath Marakkar vs Union of India

Mufeeda Arafath Marakkar vs Union of India

SooperKanoon Citation : sooperkanoon.com/1614218

Court : Kerala

Decided On : Sep-17-2021

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/5668/2020

Appellant : Mufeeda Arafath Marakkar

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 17TH DAY OF SEPTEMBER 2021 / 26TH BHADRA, 1943
WP(C) NO. 5668 OF 2020 PETITIONER: MUFEEDA ARAFATH
MARAKKAR AGED 30 YEARS W/O.MUHAMMED YASAR ARAFATH
MARAKKAR, PALESTINE HOUSE, NAMNBATHKARA WEST,
NADUVATHUR P.O., KOYILANDY TALUK, KOZHIKODE DISTRICT-673
620, KERALA. BY ADVS. M.RAMESH CHANDER (SR.)
SRI.K.NOORUDHEEN SRI.BALU TOM SRI.BONNY BENNY SHRI.
BEJOY JOSEPH P.J. RESPONDENTS:

1 UNION OF INDIA REPRESENTED BY SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT OF INDIA, NEW DELHI-110 001. 2 JOINT SECRETARY (P AND A), MINISTRY OF INFORMATION AND BROADCASTING, GOVERNMENT OF INDIA, ROOM NO.552, A WING, SHASTHRI BHAVAN, NEW DELHI-110 001. 3 THE CHAIRMAN, CENTRAL BOARD OF FILM CERTIFICATION, FILMS DIVISION COMPLEX, PHASE I BUILDING, 9TH FLOOR, DR.G.DESHMUKH MARG, MUMBAI-400 026. 4 THE REGIONAL OFFICER, CENTRAL BOARD OF FILM CERTIFICATION, 1ST FLOOR, CHITHRANJALI STUDIO COMPLEX, THIRUVALLUM, THIRUVANANTHAPURAM-695 027, KERALA. 5 THE SECRETARY TO GOVERNMENT (HOME) DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695 001. 6 THE DISTRICT MAGISTRATE, COLLECTORATE, CIVIL STATION, P.O.CALICUT, KERALA-673 020. 7 SRI.M.J.ANTONY (ANTONY PERUMBAVOOR), PRODUCER, ASHIRWAD CINEMAS, NO.59/1047, VALAKUZHI, KRISHNA SWAMI ROAD, COCHIN P.O., PIN-682 035, KERALA.

8 THE CHAIRMAN, MOONSHOT ENTERTAINMENTS PVT.LTD., 3RD FLOOR, ASWATHI TOWER, THEKUM GOPURAM, KOTTAYAM P.O., KERALA-686 001. 9 THE CHAIRMAN, CONFIDENTIAL GROUP NO.868/2, SAHODARAN AYYAPPAN ROAD, VYTILA, COCHIN P.O., PIN-682 019, KERALA. 10 SRI.PRIYADARSHAN, FILM DIRECTOR, NO.10. HADDOWS ROAD, P.O.CHENNAI, TAMIL NADU-600 008. 11 THE MANAGING DIRECTOR, MAX LAB CINEMAS, FILM DISTRIBOTORS, CHITTOOR ROAD, PULLEPPADI, COCHIN P.O., PIN-682 001, KERALA. BY ADVS.SMT.VIDYA KURIAKOSE, GOVT. PLEADER SRI.GIRISH KUMAR.V., CGC SRI.V.GIRISHKUMAR SRI.PHILIP T.VARGHESE SRI.THOMAS T.VARGHESE SMT.ACHU SUBHA ABRAHAM SMT.V.T.LITHA SMT.K.R.MONISHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.09.2021, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- W.P.(C).No.5668 of 2020
----- Dated this the 17th day of September,
2021

JUDGMENT

The petitioner is the wife of Muhammed Yasar Arafath Marakkar. She claims that, her husband is a descendant of the Great Kunhali Marakkar, the Captain of the Naval Fleets of the Calicut King Zamorine who fought against the Portuguese sacrificing their lives for the cause of this nation and culture for at least two centuries from the year AD 1498. When the petitioner came to know that the contesting respondents are releasing a feature film with name Marakkar Arabikkadalinte Simham, there was some apprehension in her mind that the history of the great Kunhali Marakkar is going to distort in the film. In such circumstances, the petitioner submitted Ext.P4 before respondents 1 and 3. Copies of the same were given to the other authorities also. This writ petition is filed with following prayers:

i. Issue a writ of mandamus or any other appropriate writ order or direction directing or compelling the 5th respondent to consider Ext.P4

representation before the release of the movie "MARAKKAR ARABIKADALINTE SIMHAM" with notice to the petitioner. ii. Issue a writ of prohibition restraining respondents 7 to 11 from exhibiting of the film after the film/movie titled "MARAKKAR ARABIKADALINTE SIMHAM" in any of the movie theatres/TV Channels. iii. Issue a writ of mandamus or any other appropriate writ order or direction directing or compelling the 3rd and 4th respondents to cancel the U.A. certificate granted to the movie "MARAKKAR ARABIKADALINTE SIMHAM". iv. Issue such other order / direction as this Hon'ble Court deems fit and proper under the

circumstances of this case.

2. Heard the Senior Counsel Sri.M. Ramesh Chander,

as instructed by Sri.Bijoy Joseph, for the petitioner, the Central Government Counsel (CGC) for respondents 1 to 4 and Sri.Philip T. Varghese for the 7th respondent. I also heard the Government Pleader for respondents 5 and 6.

3. The Senior Counsel submitted that the petitioner submitted Ext.P4 representation before the 3 rd respondent as per Rule 32 of the Cinematograph (Certification) Rules, 1983. It is better to extract Rule 32:

32.Re-examination of certified films - (1) Where in respect of a film which has been certified for public exhibition, any complaint is received by the Board, the same shall be forwarded to the Central Government.

(2) The Central Government may, if it considers

it necessary so to do, direct the Chairman to reexamine any film (in respect of which a complaint has been received by it directly or through the Board) in such manner and with such assistance as may be specified in the direction.

(3) The Chairman may, for the purpose of re-

examination aforesaid, require by written notice the person who made the application for certification of the film or the person to whom the rights of ownership or distribution in the film have/passed, to arrange at his expense to deliver a print of the certified film to any specified Regional Officer within such time as may be specified in the notice for the purpose of re-examination.

(4) The place, date and time of such re- examination shall be determined by the Chairman.

(5) The Chairman shall forward his opinion

together with the print of the film in relation to which a certificate was issued earlier to the Central Government who may after such enquiry as it deems fit, pass such orders thereon in exercise of the revisional powers under Section 6.

(6) The provisions of this rule shall apply only in cases where the revisional powers are exercisable by the Central Government under Section 6.

4. The Senior Counsel submitted that as per the

statement given by the 3rd respondent, the 3rd respondent already forwarded Ext.P4 to the 1st respondent. According to the Senior Counsel, the 1st respondent is bound to consider Ext.P4 representation in accordance to law.

5. The CGC contended that in the light of the decision

of the Karnataka High Court in K.M.Shankarappa v. Union of India [ILR 1990 KAR 4082], the 1st respondent has no jurisdiction to entertain such application. The counsel also submitted that the above judgment of the High Court is confirmed by the Apex Court in Union of India v. K.M.Shankarappa [AIR 2000 SC 3678]. The counsel submitted that in such circumstances, no orders are passed by the 1st respondent.

6. The counsel for the 7th respondent submitted that

this writ petition itself is only for popularity and to create a controversy. The counsel submitted that a huge amount is spent by the 7th respondent for producing the film and the film is going to be released soon. In such circumstances, this writ petition is only to create a controversy. The counsel supported the contentions of the CGC.

7. The Senior Counsel rebutted the contention of the

CGC and the counsel for the 7th respondent. The Senior Counsel submitted that the decisions of the Karnataka High Court and the Apex Court are not applicable to the facts and circumstances of this case. The Senior Counsel submitted that the petitioner will be able to convince the 1st respondent that Ext.P4 representation is maintainable and the judgment of the Karnataka High Court and the Apex Court is

not applicable in this case. The Senior Counsel submitted that since the matter is already referred to the 1st respondent, the 1st respondent has to decide the matter either way. According to the Senior Counsel, there may be a direction to the 1st respondent to consider Ext.P4 and take appropriate action, after giving an opportunity of hearing to the petitioner.

8. After hearing the parties in this case, according to

me, there can be a direction to the 1st respondent to consider Ext.P4 and pass appropriate orders in accordance to law. I make it clear that I have not considered the matter on merit.

9. The petitioner produced an additional document

along with I.A.No.6 of 2021. The document produced as Ext.P5 is the proceedings of the Central Board of Film Certification. The relevant portion of Ext.P5 is extracted hereunder: 3. The representation received was forwarded by CBFC to the Ministry on 2.3.2020 in compliance of Rule 32 of the Cinematograph Certification Rules. The comments of the undersigned as Examining Officer for the said film was also forwarded to the Ministry for their consideration.

10. Admittedly no further order is passed by the 1 st

respondent. According to the petitioner, she will be able to convince the 1st respondent that Ext.P4 representation is maintainable and the 1st respondent can pass appropriate orders. This is a matter to be considered by the 1 st respondent. I again make it clear that I have not considered the maintainability issue also. The question of maintainability can also be considered by the 1 st respondent. All the contentions of the petitioner and the contesting respondents are left open. The 1st respondent will consider Exts.P4 in the light of the comments forwarded by the 3rd respondent, as evident from Ext.P5. The 1st respondent can give an opportunity of hearing to the petitioner and the other affected parties including the 7th respondent. The hearing can be through online virtual mode. Therefore, this writ petition is disposed in the following manner:

1. The 1st respondent will consider Ext.P4, which

is forwarded by the 3rd respondent as evident from Ext.P5, as expeditiously as possible, at any rate, within four weeks from the date of receipt of a copy of this judgment.

2. All the contentions raised by the petitioner and the contesting respondents in this writ petition are left open.

3. The 1st respondent has to decide the question

of maintainability of Ext.P4 at first before proceeding further. Sd/- P.V.KUNHIKRISHNAN JV JUDGE APPENDIX OF WP(C) 5668/2020 PETITIONER EXHIBITS EXHIBIT P1 THE LEAF LET WHICH IS PUBLISHED WITH RESPECT TO THE MOVIE. EXHIBIT P2 PHOTOSTAT COPY OF THE INFORMATION AVAILABLE ON WATTSAPP WITH RESPECT TO MOVIE MARAKKAR ARABIKADALINTE SIMHAM EXHIBIT P3 PHOTOSTAT COPY OF THE NOTICE DEPICTING A SCENE IN THE MOVIE WHERE THE GREAT KUNHALI MARAKKAR IS PLAYED BY SRI.MOHANLAL. EXHIBIT P4 PHOTOSTAT COPY OF THE REPRESENTATION TO THE STATUTORY RESPONDENTS 7 TO 11. EXHIBIT P5 PHOTOSTAT COPY OF THE COMMUNICATION F.NO.DIL/229/2019-THI(PART) DATED 12.7.2021 ISSUED BY 4TH RESPONDENT

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com