

Utv Software Communication Vs. State of Madhya Pradesh

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SooperKanoon Citation : sooperkanoon.com/499288

Court : Madhya Pradesh

Decided On : Feb-26-2008

Reported in : AIR2008MP177; 2008(2)MPHT392

Judge : A.K. Patnaik, C.J. and ;Prakash Shrivastava, J.

Appellant : Utv Software Communication

Respondent : State of Madhya Pradesh

Disposition : Petition allowed

Judgement :

A.K. Patnaik, C.J.

1. The petitioner carries on inter alia the business of distribution of feature films and claims to be the sole distributor of the Hindi feature film 'Jodha Akbar'. The case of the petitioner in the writ petition is that the film 'Jodha Akbar' was cleared by the Central Board of Film Certification (for short 'the Board') and a Class U/A Certification was issued by the Board on 6.2.2008. Thereafter, the film 'Jodha Akbar' was put up for public screening in the theatres throughout the State of Madhya Pradesh and was being screened in about 30 theatres in the cities and towns of Madhya Pradesh when the Government of Madhya Pradesh issued an order dated 22.2.2008 suspending the screening of the film throughout the State of Madhya Pradesh with immediate effect. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution with a prayer to quash the impugned

order dated 22.2.2008. The petitioner has also prayed for an interim order for staying the effect and operation of the impugned order dated 22.2.2008.

2. Mr. Kishore Shrivastava, learned senior counsel for the petitioner submitted that under Entry 60 of List I of the Seventh Schedule read with Article 246 of the Constitution Parliament has power to make law on the subject 'sanctioning of cinematograph films for exhibition' and in exercise of this power, Parliament has made the Cinematograph Act, 1952 (for short 'the Central Act of 1952') and Section 5A of the Central Act of 1952 provides for certification of films by the Board of Film Censors. He submitted that Sub-section (3) of Section 5A provides that a certificate granted by the Board under this section shall be valid throughout India for a period of ten years subject to the other provisions of the Act. He argued that since the film 'Jodha Akbar' has been certified by the Board under Section 5A of the Central Act of 1952, the petitioner had right to have the film exhibited in the throughout country including the State of Madhya Pradesh. He submitted that the only provision of the Central Act of 1952 under which the exhibition of the film once certified under Section 5A of the Act can be suspended is Section 13 of the Central Act of 1952 under which power has been vested in the authorities mentioned therein to suspend the exhibition of the film in a State, part or district, as the case may be. He submitted that Section 13 of the Central Act of 1952 however has no applicability to States but to Union territories as would be clear from Sub-section (1) of Section 13 of the Central Act of 1952.

3. Mr. Shrivastava next submitted that the State Legislature has also the power under Entry 33 of List II of Seventh Schedule read with Article 246 of the Constitution to make laws on cinemas subject to provisions of entry 60 of List I and in exercise of such power the State Legislature of Madhya Pradesh has made the Madhya Pradesh Cinemas (Regulation) Act, 1952 (for short 'the State Act of 1952'). He submitted that Section 6(1) of the State Act of 1952 which empowers the State Government and the District Magistrate to suspend exhibition of a film in any place in the area specified in an order which has been certified under Section 5A of the Central Act of 1952 is inconsistent with the provisions of Central Act of 1952 and is therefore void.

4. Mr. Shrivastava finally submitted that Article 19(1)(a) of the Constitution guarantees to every citizen the right to freedom of speech and expression and Article 19(2) of the Constitution provides that nothing in Article 19(1)(a) of the Constitution will prevent the State from making any law imposing reasonable restrictions on the exercise of this right in the interests of inter alia public order. He submitted that in *S. Rangarajan v. P. Jagjivan Ram and Ors.* (1989) 2 SCC 574 the Supreme Court has held that the commitment of freedom of expression demands that it cannot be suppressed unless the community interest is really endangered and that the anticipated danger should not be remote, conjectural or farfetched and it should have proximate and direct nexus of thoughts repressed in a movie and the expression of thought should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a powder keg'. He submitted that Section 5B of the Central Act of 1952 enumerates the principles for guidance in certifying films and one of the principles enumerated therein is that a film shall not be certified for public exhibition if, in the opinion of the competent authority to grant certificate, the film or any part of it is against the interests of public order. He submitted that once the film *Jodha Akbar* has been confined under Section 5A of the Central Act of 1952 after the authority had formed the opinion that the film will not effect public order, unless the situation is so grave and intrinsically dangerous to public order, the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution should not be affected by any order preventing the exhibition of a film. He submitted that the Court should strike down the impugned order dated 22.2.2008 as public order in the State of Madhya Pradesh was not really endangered by the exhibition of film '*Jodha Akbar*' and the State Government appears to have passed the impugned order dated 22.2.2008 on the pressure of Kshatriya Committee.

5. Mr. R.N. Singh, learned Advocate General, on the other hand, submitted that entry 33 of List II of Seventh Schedule read with Article 246 of the Constitution is clear that the State Legislature has power to make laws on cinema subject to provisions of entry 60 of List I. He further submitted that entry 60 of List I of the Seventh Schedule covers only law made by Parliament on 'sanctioning of cinematograph films for exhibition'. He submitted that in exercise of such power under List I entry 60 read with Article 246 of the Constitution, Parliament has made

Central Act of 1952 which leads to certification of films and cinematograph of films for public exhibition, but the State Legislature has also made the State Act of 1952 on cinemas in exercise of its powers under entry 33 of List II of Seventh Schedule read with Article 246 of the Constitution. He submitted that on a reading of the preamble of the Act and its different provisions, it is clear that the Act provides for not only regulation for cinema through licensing but also empowers the State Government and the District Magistrate to suspend the exhibition of any film in any place and any area if it or he is of the opinion that any film which is being publicly exhibited is likely to cause a breach of peace.

6. Mr. R.N. Singh submitted that it will be clear from Sub-Section (1) of Section 6 of the State Act of 1952 that the State Government is empowered thereunder to issue an order in respect of whole State or any its part. He further submitted that two reports, one dated 17.2.2008 by the Additional Commissioner(Excise) and another dated 21.2.2008 by the Inspector General of Police(Law & Order) were submitted to the State Government and on the basis of the two reports, the State Government was formed an objective opinion that the exhibition of the film 'Jodha Akbar' if continued would cause breach of peace and accordingly the State Government passed the order under Sub-section (1) of Section 6 of the State Act of 1952 suspending the exhibition of the film 'Jodha Akbar' in the entire State of Madhya Pradesh. He submitted that the language of subsection (1) of Section 6 of the State Act of 1952 is clear that the order passed under Sub-section (1) of Section 6 of the Act by the State Government and the District Magistrate shall remain in force for only two months unless the State Government is of the opinion that such order should continue and further directs for extension of period of suspension. He submitted that this is therefore temporary measure adopted by the State Government or the District Magistrate to prevent breach of peace and as such the fundamental right guaranteed under Article 19(1)(a) of the Constitution is not affected for a long period.

7. Mr. Mrigendra Singh, Learned Counsel, appearing for the intervenor submitted that sentiments of the Kshatriya Committee has been very badly affected by the distortion of history shown in the film 'Jodha Akbar' and if the film is exhibited and the feelings of the Kshatriya Committee are hurt, there may be a serious law and

order situation in the State of Madhya Pradesh.

8. We have considered the submissions of learned counsel for the parties. Article 19(1)(a) of the Constitution guarantees right to freedom of speech and expression to every citizen. In *S. Rangarajan v. P. Jagjivan Ram and Ors.* (supra), the Supreme Court has further held that a movie enjoys the guarantee under Article 19(1)(a) of the Constitution. Paragraph 10 of the judgment of the Supreme Court as reported in SCC is quoted herein below: 'Movie doubtless enjoys the guarantee under Article 19(1)(a) but there is one significant difference between the movie and other modes of communication. The movie cannot function in a free marketplace like the newspaper, magazine or advertisement. Movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The focussing of an intense light on a screen with the dramatizing of facts and opinion makes the ideas more effective. The combination of act and speech, sight and sound in semidarkness of the theatre with elimination of all distracting ideas will have an impact 'in the minds of spectators'. In some cases, it will have a complete and immediate influence on, and appeal for everyone who sees it. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It is said: 'as an instrument of education it has unusual power to impart information, to influence specific attitudes towards objects of social value, to affect emotions either in gross or in microscopic proportions, to affect health in a minor degree through sleep disturbance, and to affect profoundly the patterns of conduct of children.' (See Reader in Public Opinion and Communication, Second Edition by Bernard Berelson and Morris Janowitz, p. 390.) The authors of this book have demonstrated (at pp. 391 to 401 by scientific tests the potential of the motion pictures information of opinion by spectators and also on their attitudes. These tests have also shown that the effect of motion pictures is cumulative. It is proved that even though one movie relating to a social issue may not significantly affect the attitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instil or cultivate violent or good behaviour. With these qualities and since it caters for

mass audience who are generally not selective about what they watch, the' movie cannot be equated with other modes of communication. It cannot be allowed to function in a free marketplace just as does the newspapers or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary.

9. It will be clear from the observations quoted above that the Supreme Court has also held that a movie also has a unique capacity to disturb and arouse feelings and for this reason censorship by prior restraint is not only desirable but also necessary. The Central Act of 1952 provides for such prior censorship of films. Section 5A of the Central Act of 1952 states that if after examination of film or having it examined in the prescribed manner, the Board considers that the film is suitable for screening of public, a certificate may be given which is called 'U/A' Certificate. Section 5B of the Central Act of 1952 enumerates the principles for guidance while writing films and it has been held by the Supreme Court in *S. Rangarajan v. P. Jagjivan Ram and Ors.* (supra) that Article 19(2) of the Constitution has been practically read into Section 5B(1) of the Central Act of 1952. Article 19(2) of the Constitution, as we have seen, enables the State to make law imposing reasonable restrictions on the exercise of rights guaranteed under Article 19(1)(a) of the Constitution in the interests of inter alia public order and Section 5B of the Central Act of 1952 provides that a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of inter alia public order.

10. We may now examine the provisions of Sub section (1) of Section 6 of the State Act of 1952 which is quoted herein below:

6. Power of State government or local authority to suspend exhibition of films-(1) The State Government in respect of the whole State or any part thereof, and the District Magistrate in respect of the district or town within his jurisdiction, may, if it or he is of opinion that any film which is being publicly exhibited, is likely to cause a breach of the peace, by order suspend the exhibition of any film and during such suspension no person shall exhibit such film in any place in the area specified in the order. The language of Sub-section (1) of Section 6 of the State Act is clear that the State Government can pass an order under Sub-section (1) of Section 6

suspending the exhibition of any film if it is likely to cause breach of peace either in respect of the whole State or any part thereof. The last limb of Sub-section (1) of Section 6 makes it clear that once such an order is passed no person shall exhibit the film in respect of which the order has been passed in any place 'in the area specified in the order'. Thus, the competent authority of the State Government has to apply his mind before issuing an order under Sub-section (1) of Section 6 whether the order of suspending the exhibition of a particular film is to be passed for the whole of the State or in any part thereto. If the materials before the State Government are such as to indicate that breach of peace in entire State was likely to be caused on account of public exhibition of a film, the competent authority of the State Government may pass an order under subsection (1) of Section 6 in the whole State. But if the materials before the state are such as to indicate that the breach of peace in only particular areas of the State was likely to be caused by the exhibition of the film, the State Government will confine its order under Sub section (1) of Section 6 to that specific area.

11. In the instant case, we find that the impugned order dated 22.2.2008 state that the exhibition of the film Jodha Akbar has invited opposition and agitation in some in some places on account of which the State Government is of the opinion that breach of peace is likely to be caused in the State of Madhya Pradesh and for this reason the State Government has issued the order suspending the exhibition of the film Jodha Akbar under Section 6(1) of the State Act of 1952 in the whole of the State.

12. Mere opposition or agitation in some places in the State of Madhya Pradesh to the exhibition of the film Jodha Akbar cannot be a ground for arriving at an opinion that there would be breach of peace in the State of Madhya Pradesh or at the places concerned. As has been held by the Supreme Court in *S. Rangarajan v. P. Jagjivan Ram and Ors.* (supra), the anticipated danger from the expression of the thought or opinion should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a power keg'. Paragraph 45 of the judgment of the Supreme Court is quoted herein below:

The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a power keg.

13. We have also perused the two reports which were placed before the State Government before it passed the order dated 22.2.2008. On a perusal of the report dated 17.2.2008 of the Additional Commissioner(Excise), we find that he has reported that in many places of the State where the film was exhibited there have been no problems whatsoever. In the report of the Inspector General of Police(Law & Order) dated 21.2.2008, we find that in some places there has been some agitation and opposition to the exhibition of the film Jodha Akbar, but the agitation and opposition are not of such a serious nature as to form an opinion that the exhibition of the film of Jodha Akbar was likely to cause breach of peace in the entire State of Madhya Pradesh. In this case, it is quiet possible that sentiments and feelings of the Kshatriya Committee in the State may have been affected as has been submitted by Mr. Mrigendra Singh, Learned Counsel for the intervenor, but under Article 19(1)(a) of the Constitution and in a democracy, the commitment to freedom of expression has to be kept alive and freedom of expression cannot be gagged by a simple agitation or opposition by one section of the society. It is only when there is immediate danger to public order so as to spark a breach of peace that the State Government or the District Magistrate should exercise the powers under Section 6(1) of the State Act of 1952 and not otherwise. As observed by the Supreme Court, paragraph 51 of the judgment in as reported in S. Rangarajan v. P. Jagjivan Ram and Ors. (supra) as reported in SCC:

We are amused yet troubled by the stand taken by the State Government with regard to the film which has received the National Award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it. If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.

14. In the result, we quash the order dated 22.2.2008 of the State Government issued under Section 6(1) of the State Act of 1952 but we make it clear that it will be open for the State Government or the District Magistrate to pass orders under Section 6(1) of the State Act of 1952 if it/he is of the opinion that the exhibition of the film is likely to cause breach of peace on the basis of fresh materials that may be available after keeping in mind the observations made in this judgment. In view of our aforesaid conclusion, it is not necessary for us to examine the question whether the State Act of 1952 is ultra vires the powers of State Legislature under Article 246 of the Constitution.

15. The writ petition is allowed. No order as to cost.