

TVS Employees' Federation and others Vs. TVS and Sons Ltd. and another

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Court : Chennai

Decided On : Dec-15-1994

Reported in : [1996]87CompCas37(Mad)

Judge : D.M. Ali Mohamad and ;Misra, JJ.

Appeal No. : O.S.A. No. 208 of 1991

Appellant : TVS Employees' Federation and others

Respondent : TVS and Sons Ltd. and another

Advocate for Def. : N.S. Varadachari, Adv.

Advocate for Pet/Ap. : V. Prakash, Adv.

Judgement :

Mishra, J.

1. TVS Employees' Federation, Bombay, represented by its president and four others, who are defendants in a suit for permanent injunction, have preferred the instant appeal under clause 15 of the Letters Patent of this court against the order of temporary injunction pending suit by a learned single in O.A. No. 45 of 1991.

2. The plaintiff-first respondent herein is a public limited company incorporated under the Indian Companies Act having its head office at 7-B, West Veli Street,

Madurai, and having its branches in Madras and all over Kerala, Tamil Nadu, Karnataka and Goa. It consists of three divisions, viz., Sundaram Motors, Madras Auto Service and TVS, Madurai. Madras Auto Service is engaged in the business of dealing in spare parts and other accessories for motor vehicles. Sundaram Motor and T.V. Sundaram Iyengar and Sons Limited, i.e., the other two divisions, are also engaged in the business of rendering sales, service and repairs to automobiles of various descriptions, primarily with reference to the motor vehicles, which are governed by exclusive franchise given to them by manufacturers, viz., the Premier Automobiles Ltd., Bombay, Mahindra and Mahindra Limited, Bombay, Mahindra Nissan Limited, Hyderabad, and Ashok Leyland Ltd., Madras, are some such manufacturers who have given to Sundaram Motors and T.V. Sundaram Iyengar and Sons franchise, and their activities are extended to substantial parts of Southern India in 17 centres, having units in Tamil Nadu, Karnataka, Kerala, Pondicherry and Andhra Pradesh. The fifth defendant-appellant, Thangappan, it is alleged, claiming that he was the president of the TVS Employees' Federation (the first defendant-appellant) purported to prepare a video cassette stated to be depicting the struggle of TVS workers, according to the plaintiff-respondent, with the 'malicious intention of maligning the reputation of the plaintiff-respondent's units with ulterior motive with no justification whatsoever'. The plaintiff-respondent has alleged, 'apparently with a view to instigate that loyal workers of the plaintiff-company and its units have not only prepared the film and video cassettes maligning the reputation of the plaintiff, but has purported to pass it on to defendants Nos. 2 and 3 for exhibiting in Madras Theatres, defendants Nos. 2 and 3, being Sundaram Motors Employees' Union, Madras, represented by its president and Sundaram Industries Employees' Union, represented by its president. The only submission to support why the plaintiff-respondent has inferred that the video cassette has been prepared solely with a view to maligning the reputation of the plaintiff's units throughout India is stated in the plaint in these words :

'The plaintiff understands and believes the same to be true that the film and video cassettes make a false version about the plaintiffs management dealing with the workers. They are wrong since they have introduced in the video cassettes to make it appear as if the workers are struggling in the plaintiff's companies. It is

made as a documentary film. The plaintiff understands that the film is made by way of video clippings. As far as the petitioners-workers are concerned there is no grievance whatsoever, as already stated. Assuming the workers have any grievance, they have legal remedies under the various labour enactments under the Industrial Disputes Act, 1947, etc. In fact, the workers can always agitate rights, if any, through the recognised union. Since the workers are given all facilities and very good scale of pay, etc., the workers never showed any displeasure or had no occasion to make demands, and the relationship of the plaintiff and all other workers are absolutely cordial, and there was no occasion for workers to have any grievance against the plaintiff. Therefore, any film prepared by the defendants depicting as if the workers of the plaintiff are put to harassment and they are struggling are all false. In any event, neither by himself or through defendants Nos. 1 to 4 can seek to depict any alleged grievance through video film. There is no law under which the defendants can seek to depict the grievances, if any, through the 'video'. The plaintiff-respondent also filed an application supported by an affidavit alleging therein that it had come to know that the fifth defendant-appellant styling himself as the president of the first defendant-appellant had prepared certain film and video cassettes said to be depicting the alleged struggle of TVS workers and is making attempts to exhibit the same in the theatres and through video clubs. The fifth defendant under the name of the first defendant is seeking to instigate loyal workers of the plaintiff-company and its other units and has prepared the film and video cassette maligning the reputation of the plaintiff and that it had come to know from the press where it was published that such video cassettes were sought to be exhibited depict company... In the publication, the film is stated to have been produced by Cadre of Media Resource and Action (CAMERA) of Bombay, tracing the history of TVS workers struggle since 1948. The court entertained the said application and issued an order of ad interim injunction in the application on January 11, 1991. The respondents-appellants appeared in the application and gave their version of the matter by a counter-affidavit. They alleged that defendants Nos. 2 to 4, who represented the majority of the employees of the plaintiff-respondent in its different divisions and units had formed a federation (first defendant), that the management of the plaintiff-respondent had created a trade union and almost made it compulsory for

the workmen to join the management-controlled union and always succeeded in ushering in it its nominees as office-bearers by some sort of elections. Since the workmen's grievances were not attended to and the management almost exploited the workmen through the union controlled by it, the workers who found that the management was not fairly treating them joined the unions represented by defendants Nos. 2, 3 and 4, i.e., the appellants, who finally joined together to form a federation, i.e., the first defendant. They (the appellants) described in some detail how and why the workmen felt aggrieved and how the plaintiff denied to the workmen their due and victimised them by taking recourse to disciplinary powers, power to transfer, discriminating them in the matter of payment of wages, and extending the monetary benefits including the loans and ex gratia payments to its puppet workmen and that the victimised workmen led by the first appellant-federation organised the struggle on their behalf at Madras and raised demands, inter alia, for the appointment of a commission of inquiry to go into the unfair labour practices in the TVS group of companies, including the plaintiff-respondent and other matters.' The defendants-appellant alleged as follows :

'The workmen started a struggle near Panagal Park on May 1, 1990, with a continuous fast and more than 25 workers were admitted in the hospital on the verge of death. 203 workers were arrested for 'sathyagraha' and were detained in Central prison till the Government was directed to release the workmen by this honourable court in a writ petition of habeas corpus filed by us. 203 workers suffered detention in the Central prison for 2 months to secure access to justice and prevented by the Government by the corporate might and influence of the TVS group.

I submit that the struggle of the TVS workers was sought to be portrayed by a documentary video by a non-profit organisation with the acronym 'CAMERA' for which the respondent-union had no objection. The video cassette is meant for private circulation for trade union leaders and journalists and for persons interested in labour and human rights activities. The said portrayal of the struggle is a basic right guaranteed under article 19(1)(a) of the Constitution of India to the members of the respondent trade union and this respondent. The injunction sought for is an infringement of this basic right. The entire video film is an

educative documentary for trade unions and others and meant for private viewing only and without any collection whatsoever for the viewing. It is not meant for screening in theatres and video clubs.

The respondents deny the allegations of the plaintiff that the film maligns the reputation of the company and in any event the documentary video portrays the truth and does not in any way defame and harm the reputation of the firm.'

3. In the course of the hearing of the application, the parties produced some documents and the court felt it necessary to have the impugned video cassette screened in the chambers. After seeing the video film which ran to about 45 minutes, the court observed :

'After a careful watch and examination of the various features and scenes which appeared therein, I am inclined to observe that the major part of the film contains objectionable materials which should not normally be allowed. There appears to be no harm in the labour leaders such as Mr. K.T.K. Thangamani, Mr. Kuchelar, late Mr. Chinthan and Mr. Prakash, advocates, appearing now and then in the course of the film and making some short speeches provided they are of educative value to the workers and their criticism is fair. But the objectionable part is persons who are not the workmen of the applicant-company and who have been dismissed from service for various actions taken by the applicant-management are allowed to act before the camera. They want to exhibit generally that the TVS group of companies illtreat and harass the workers. In a scene, an old woman, who had been made to act as such, is shown as lying down and crying for help as if she is seriously ill as if she fell down due to harassment by the TVS group of companies. Some persons were made to act as workers, are shown to be fasting and it is not made clear why they fast. Some workers are shown to lie down as if they are suffering. A dismissal order in relation to worker is exhibited. But the reason for dismissal is not stated. It is open to the applicant-company to take disciplinary action against the worker, if he is guilty of misconduct. If the dismissal of the worker is wrongful, he is entitled to approach the hierarchy of Tribunals created under the Industrial Disputes Act. It is worse to see that a stranger, who is asked to act as if he is sitting before the worker who has asked to bend as a substitute

for table for the purpose of writing. The said actor comments that employment could be sought in the applicant-company, if one had influence. One person acting as a manager, uses the telephone often and says something as if the officers of the TVS companies are indulging in harassment to the workers. Some instances in which workers were dismissed from service after disciplinary proceedings and after exhaustion of the legal remedies under the statute are also shown here as unjust action on the part of the applicant-management'.

4. After referring to some of the provisions of the Cinematograph Act (Act 36 of 1952), and the judgment of the Supreme Court in S. Rangarajan v. P. Jagjivan Ram : [1989]2SCR204 , the learned judge has held that in the circumstances, it cannot be contended on behalf of the respondents (appellants herein) that their right under article 19(1)(a) of the Constitution of India had been infringed by the grant of an order of injunction.

5. The reference to the news item in the application for ad interim injunction is attributable to a publication dated December 15, 1990, of the report of the special correspondent in the Economic Times, Bombay edition, stating that there was a new twist to the TVS workers agitation. With peaceful demonstrations, satyagrahas and marches taking them nowhere in their struggle against the TVS group, the workers have come out with a novel method to espouse their cause. A documentary film, depicting the struggle of the TVS workers and determination of their families towards their goal of achieving their trade union rights, had been put together to disseminate information. The fifth defendant gives the reasons for making this film, viz., 'media coverage of long drawn battle of the workers has generally been lukewarm'. The report mentioned that there was a special screening of the film at Bombay and that it was going to be screened in other parts of the country to create public awareness as well as sympathy for the cause of the workers. As to the contents of the cassette, the news item stated -

'The 45-minute film produced by the Cadre of Media Resources and Action (CAMERA) of Bombay, traces the history of the TVS workers' struggle since 1948. The struggle, however, gained momentum since 1987, when various Central Trade Unions like CITU, AITUC, other unions and the civil liberty movements

extended their support to the TVS workers.'

The said news item was also published in the Bangalore edition of the said newspaper.

6. The right of life and personal liberty which are guaranteed as fundamental freedom in the Constitution of India, have always been cherished and practised by all Indians. In the relentless struggle for independence, the people of India sacrificed their lives and suffered incarcerations, but never compromised with the British crown on the freedom of speech and expression. Independent India has constituted itself as a democratic republic with the preamble to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. The liberty of thought, expression, belief and faith are enshrined as fundamental rights and put in part III of the Constitution, including the freedom of speech and expression to all citizens of India in article 19(1)(a) thereof. The role, which the High Courts and the Supreme Court, more particularly the Supreme Court have played in safeguarding the freedom of its citizens, are already legion. Yet, time and again the courts are invited to delve into issues, where the freedom of speech and expression are allegedly abused or sought to be restricted by executive orders and legislations. To pick up a few of such milestone judgments of the courts, we have in our mind the Constitution Bench judgment of the Supreme Court in the case of *Bennett Coleman and Co. Ltd. v. Union of India*, : [1973]2SCR757 , wherein the court has clarified that a company as such may not be said to have the fundamental right to freedom of speech and expression, which is exclusive for a citizen, but, the shareholders enjoyed this right as citizens. This right, which shareholders enjoyed as citizens of India, was not lost whenever they associated themselves to form a company. In the majority judgment by A.N. Ray J., as he then was, William Blackstone is quoted to have said in his commentaries (at page 129 of AIR 1973 SC) :

'Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes

what is improper, mischievous or illegal, he must take the consequences of his own temerity.'

7. And said

'The faith in the popular Government rests on the old dictum 'let the people have the truth and the freedom to discuss it and all will go well'... Steel will yield products of steel. Newsprint will manifest whatever is thought of by man. The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are corrects.'

8. Mathew J., in his separate judgment in the said case, has extracted a piece from an earlier judgment of the Supreme Court in the case of *Express Newspapers P. Ltd. v. Union of India*, : (1961)ILLJ339SC , which we feel persuaded to extract (at page 137 of AIR 1973 SC) :

'It is trite to observe that the fundamental right to the freedom of speech and expression enshrined in article 19(1)(a) of our Constitution is based on these provisions in Amendment I of the Constitution of the United States of America ...'

9. Mathew J. has quoted the observations of Alexander Hamilton from the *Federalist* papers as follows (at page 137 of AIR 1973 SC) :

'On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two... I contend that whatever has been said about it... amounts to nothing. What signifies a declaration that 'the liberty of the press shall be inviolably preserved'? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable...'

10. He has quoted various authorities particularly on the freedom of speech or of the press and Lincoln on liberty (at page 138 of AIR 1973 SC) :

'The world has never had a good definition of it.'

and given his opinion in these words (at page 143 of AIR 1973 SC) :

'The constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the benefit of the people. The freedom of speech includes within its compass the right of all citizens to read and be informed,'

and added to his view a quotation from a judgment of the U.S. Supreme Court in *Time v. Hill* [1968] 385 US 374 :

'The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people'.

11. This judgment of the Supreme Court points out (at page 143 of AIR 1973 SC) :

'The freedom of speech protects two kinds of interest. There is an individual interest, the need of men to express their opinion on matters vital to them and a social interest in the attainment of truth so that the country may not only accept the wisest course but carry it out in the wisest way.'

12. Referring to the observations in *Bennett Coleman and Co. Ltd. v. Union of India*, : [1973]2SCR757 , S. Mulgaokar, In re, AIR 1978 SC 727, Beg C.J. has said on liberty in these words (p. 729) :

'John Stuart Mill, in his essay on 'Liberty', pointed out the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may be called the 'dialectical' process of a struggle with wrong ones which expose errors. Milton, in his 'Areopagitica' (1644) said : 'Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously be licensing and... death your right to say it. Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a Society which denies it in however subtle a form, due freedom of thought and expression to its members'.'

13. The Indian Constitution does not use the expression 'freedom of the press' in article 19(1)(a), but, it is obviously included in article 19(1)(a). The extent of the right has, however, been more often examined in the cases of publication of matters which allegedly offended some one's public image. When a speech or expression would offend the right of another, we shall take up soon. No individual,

however, can take the liberty of speaking something, which is injurious to public interest. In *G. Kasturi v. N. Murali* [1990] 2 LW 177; [1992] 74 Comp Cas 661, this court considered the question whether by not permitting a news item to be published concerning the Bofors issue, the managing director-cum-editor of the publisher company acted against public interest and one of us speaking for the court has stated in the said judgment as follows (at page 729) :

'... prohibiting to misdoubt her strength. Let her and Falsehood grapple; whoever knew Truth put to the worse, in a free and open encounter?... who knows not that Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious, those are the shifts and defences that error makes against her power...'

14. Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be zealously guarded. Voltaire expressed a democrat's faith when he told an adversary in arguments, I do not agree with a word you say, but, I will defend to the death... you right to say it (at page 685 of 74 Comp Cas) :

'There has, however, been an attempt to introduce as an act against public interest, the decision of the managing director (editor) to withhold publication of the second instalment of news on the Bofors issue. Section 397(1) talks of a complaint that the affairs of the company 'are being conducted in a manner prejudicial to public interest'. The words 'are being conducted' must mean several acts in continuity and not one isolated act. The expression 'interest' in this context also must receive a meaning different from the interests of a reader of a news item, who as a member of the public, may have one or the other opinion. Public interest cannot be allowed to be confused with public opinion. John Burke in Stroud's Judicial Dictionary of Words and Phrases (volume 3, third edition, at page 2381) has elucidated that the expression 'a matter of public or general interest' does not mean that which is interesting as gratifying curiosity or a love of information or amusement, but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected'...

15. In the said judgment, the Bench reversed a judgment of a learned single judge for the reason that a decision regarding whether the publication of a news item would be in public interest or not, cannot in any manner be said to affect public interest. Whether the interest of the public is in prejudice or not will be found only after publication but not before.

16. Speaking generally, whether a court could forestall a publication of words, etc., or any expression which is so cherished has always been a difficult proposition, as a common law action in a court of law against words known as actionable per quod, i.e., words not actionable per se upon their face, but, only in consequence of extrinsic facts showing circumstances under which they were said or the damages resulting to slandered party therefrom is ordinarily permitted only on allegation and proof of special damages. Actionable per se, i.e., where words spoken in themselves are libellous or slanderous, words which law presumes must actually, proximately and necessarily cause damage to another, words which make imputation of crime, loathsome disease, unchastity, affecting business, trade, profession, office or calling are taken as libel or slander and come under the action for tort. Libel is understood in its most general sense as a method of defamation expressed by print, writing pictures or signs and any publication by any such method that is injurious to the reputation of another. A false and unprivileged publication in writing of defamatory material, a maliciously written or printed publication, which tends to blacken a person's reputation or to expose to public hatred, contempt or ridicule or to injure his business or profession, accusing in writing and printing against the character of a person, which affects his reputation in that it tends to hold him up to ridicule, contempt, shame, disgrace, or obloquy, or to degrade in the estimation of the community or to induce an evil opinion of him in the minds of right thinking persons or to make him an object to reproach or to diminish his respectability or abridge his comforts; to change his position in society for the worse or to dishonour or discredit him in the estimation of the public or his friends and acquaintances, or to deprive him of friendly intercourse in society, or cause him to be shunned or avoided, or where it is charged that he has violated his public duty as a public officer, said almost in any language which upon its face has a natural tendency to injure a man's reputation either generally or with respect to his occupation is libel. Libellous per se : a publication is libellous per se when

the words are of such a character that an action may be brought upon them without the necessity of showing any special damage, the imputation being such that the law will presume that any one so slandered must have suffered damage. To render words 'libellous per se', the words must be of such character that a presumption of law will arise therefrom that the plaintiff has been degraded in the estimation of his friends or of the public or has suffered some other loss either in his property, character, reputation, or business or in his domestic or social relations. When a publication is 'libellous per se', that is, defamatory on its face, it is actionable per se, libellous per quod, however, are such expressions that their injurious character or effect is required to be established by allegation and proof. They are those expressions which are not actionable upon their face, but which become so by reason of the peculiar situation or occasion upon which the words are written or spoken. Publications which are susceptible of two reasonable interpretations, one of which is defamatory and the other is not or publications which are not obviously defamatory, but which become so when considered in connection with innuendo, colloquium, and explanatory circumstances fall in this class. Law dictionaries and law lexicons thus clearly indicate that libellous per se is actionable per se. Words themselves will speak of the injury which they cause to some one and if a legal injury is unavoidable, the court must presume in favour of the action. The expressions which are libellous per quod, however always require specific pleading and proof of how they have caused any legal injury to someone. We have to keep in mind in the instant case that the plaintiff respondent has not brought the present action for pre-emptive injunction upon any right of his under any specific law or a statute having been violated. The action which he has chosen is one in support of a person's right, which of course is an important aspect of right to life under article 21 of the Constitution of India. Such actions lie at common law without the aid of any statute. There is nothing to show that the defendants were/are under any contractual obligation or that they have gone against any consensus ad idem. It is thus an action ex delicto, i.e., an action in or arising out of a tort. In such a case, ordinarily action for damages is permitted and damages are awarded on the court's satisfaction in accordance with law whether the defamatory publication is libellous per se and the defendant has no plea in defence or whether it is libellous per quod and the plaintiff has been able to prove it to be defamatory

in the sense that it has caused injury to him which the court recognises as a legal injury due to acts ex delicto of the defendant. Injunction is always an exception. The court has power to restrain by injunction the publication of libellous or slanderous materials, but exercises such power only when it is satisfied that there is a reasonable apprehension that the defendant unless so restrained will continue to publish or repeat the publication of the defamatory matter of which complaint is made. In the book on Libel and Slander by Carter Buck, 1992, 4th edition, page 178, the following is found :

'The law relating to the grant of interim (or interlocutory) injunction in defamation action is significantly different from that relating to injunctions in general. Although the House of Lords gave authoritative consideration to the circumstances in which interlocutory injunctions should be granted in the case of *American Cyanamid Co. v. Ethicon Ltd.*, the Court of Appeal has repeatedly asserted subsequently that this decision has no application to actions for defamation and malicious falsehood. The jurisdiction of the court to grant interim injunction in action for defamation is exercised with the greatest caution and only in clearest possible cases. The reason for this is that no injunction can be granted unless the words or matter complained of are libellous...'

17. Two other rules are indicated in this book. They are :

'(1) An interim injunction will not be granted unless the court is satisfied that if the publication were to be continued it would result in immediate and irreparable injury, nor will it be granted if the plaintiff can be fully compensated in damages.

(2) The court must be satisfied that the words are untrue and that there is no defence available. It will not grant an injunction if the defendant swears an affidavit that he proposes to plead justification, unless it is satisfied that he will not be able to establish such a plea.'

18. Carter Buck says and we shall presently see the authorities are almost unanimous that the court is always most reluctant to grant injunction unless it is fully satisfied about the imminency of the injury and the injury being irreparable. In such cases, generally, an application for an interlocutory injunction is entertained

after an initial publication of the alleged defamatory material in order to prevent its repetition. The courts ordinarily do not grant an injunctions to restrain a threatened publication, known as quia timet injunction, except in gross cases or publication, which are injurious to public interest, and, if at all, it grants injunction to prohibit any publication, it does so when the plaintiff is able to prove precisely what the threatened publication is going to contain and how it is going to cause irreparable injury. It is so because it is difficult to perceive the precise knowledge of the contents of the publication unless the publication itself is made and the contents are accordingly known. It is indeed in very rare cases that exception can be made and a threatened or contemplated publication stopped.

19. Before we take notice of the law laid down by the Supreme Court of India and other authorities on the subject, which delineate the parameters of the court's role, we may take notice of the provisions of the Cinematograph Act, 1952, as amended from time to time. This Act has a definition of cinematograph under section 2(c) thereof to include any apparatus for the representation of moving pictures or series of pictures and a definition of films which is sufficient to include a video, a television and a VCR. A video is an appliance, which is capable of use for transmission of signs, signals, images and sounds and, therefore, falls within the ambit of the term 'telegraph', and is an apparatus for the representation of moving pictures or series of pictures. A television likewise is an appliance capable of use for reception of signs, signals, writings, images and sounds and falls within the definition of telegraph and an apparatus for the representation of moving pictures or series of pictures. A VCR is obviously for playing pre-recorded copies of movies on the television screen. It is certainly used as an apparatus for the representation of the moving pictures or series of pictures and comes within the definition of cinematograph. The Act has introduced a requirement of certification of films for public exhibition and prescribed penalties for contravention of the requirements of the provisions thereof as well as seizure of a film in respect of which, no certificate has been granted, but it is exhibited or a film certified for restricted public exhibition when exhibited otherwise. This Act has provided for regulation of exhibition by means of a cinematograph and provided that no person can exhibit a film by means of cinematograph elsewhere than in a place licensed under the Act or otherwise than in compliance with the conditions and the restrictions imposed

under the licence. Section 5B of the Act which is introduced by the Cinematograph (Amendment) Act, 1981, says :

'Principles for guidance in certifying films. - (1) 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 the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.

(1A) In particular and without prejudice to the generality of the provisions of sub-section (1), a film shall not be certified as a film fit for exhibition outside India, if, in the opinion of the authority competent to grant the certificate, the film or any part of it presents or is likely to present an erroneous, distorted or misleading image of the social, cultural or political institutions of India or any part thereof.

(2) Subject to the provisions contained in sub-section (1) or sub-section (1A) the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.'

20. Since the cassette with the appellants is a film as defined under the Cinematograph Act and is fit to be exhibited only by the apparatus called 'VCR', its exhibition shall attract the provisions of the Cinematograph Act. In its judgment in the case of *S. Rangarajan v. P. Jagjivan Ram* : [1989]2SCR204 , the Supreme Court has considered the scope of judicial review and indicated the standard to be applied in judging a film by the censor board or the court, to restrict the freedom of speech and expression under article 19(1)(a) of the Constitution of India. The case was concerned with the exhibition of a Tamil film called *Ore Oru Gramathile*. The story of the film and the facts of the case are available in detail in the judgment of the Supreme Court. The second revising committee under the Cinematograph Act by the majority opinion granted 'U' certificate for the exhibition of the film. That was challenged before the High Court by way of writ petitions. The writ petitions were dismissed by a single judge. The Division Bench upon an appeal allowed the writ petitions and revoked the certificate. The Division Bench largely depended upon

the minority view of the second revising committee and also the opinion of the Examining Committee. The producer of the film and the Government of India by obtaining leave, appealed to the Supreme Court. The film in the meanwhile (before the judgment of the Supreme Court) was given national award by the Directorate of Film Festival of the Government of India. After referring to the decisions of the American Supreme Court and accepting the view that expression by means of a motion picture is within the freedom of speech and expression, including that of the press as under the first amendment to the U.S. Constitution, (the first amendment being 'Congress shall make no law... abridge the freedom of speech or of the press' and observing that this amendment is absolute in terms and it contains no exception for the rights, the Supreme Court pointed out (at P. 582) :

'The framework of our Constitution differs from the First Amendment to the U.S. Constitution. Article 19(1)(a) of our Constitution guarantees to all citizens the right to freedom of speech and expression. The freedom of expression means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and the right to propagate or publish opinion. The communication of ideas could be made through any medium, newspaper, magazine or movie. But this right is subject to reasonable restrictions on grounds set out under article 19(2) of the Constitution. The reasonable limitations can be put in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The farmers deemed it essential to permit imposition of reasonable restrictions in the larger interests of the community and country. They intended to strike a proper balance between the liberty guaranteed and the social interests specified under article 19(2)'.

21. The Supreme Court has then observed (p. 582) :

'The 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 market place like the newspaper, magazine or advertisement. The 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 the semi darkness 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, page 390). The authors of this book have demonstrated (at pages 391 to 401), by scientific tests the potential of the motion pictures in formation 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 market place just as do the newspapers or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary'.

22. The fact that the film as produced by the appellants for a public exhibition as movie in a cinema house although it may be intended for a select audience, in particular for the workers of TVS companies, is enough to invite censorship. It is not only desirable but also necessary as the film is a potential instrument which can disturb peace and arouse violence. If it is within the limits and not in any manner in conflict with the interest of sovereignty and integrity of India, the security

of the State, friendly relations with foreign States, public order, decency or morality or is not in contempt of court, or causes defamation or incites offence it should get a censor's certificate. If, however, its contents are such that they cause disturbance and work against the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or lead to contempt of court, cause defamation or incitement to an offence, the censor should refuse certificate or restrict exhibition or put such curbs as it would find desirable. The Cinematograph Act provides the mechanism for scrutiny for maintaining the required balance between the liberty guaranteed under article 19(1)(a) and the social interests specified under article 19(2) of the Constitution. In *S. Rangarajan v. P. Jagjivan Ram* : [1989]2SCR204 , the Supreme Court has taken notice of the various provisions of the Cinematograph Act and noted that article 19(2) has been practically read into section 5B(1) of the said Act. Section 5C confers the right of appeal to the Tribunal against refusal of certificate. Section 6 gives to the Central Government the revisional power to call for the records in relation to any proceeding at any stage where it is not made the subject-matter of appeal to the Appellate Tribunal. Under section 8 of the Act (the Central Government has power to make rules) and power to provide guidelines under section 5B(2) for the Censor Board (guidelines have been provided), (1) relating to the objects of the film; and (2) requiring the Board to ensure that (i) anti-social activities such as violence are not glorified or justified; (ii) the modus operandi of criminal or other visuals or words likely to incite the commission of any offence are not depicted; (iii) pointless or avoidable scenes of violence, cruelty and horror are not shown; (iv) human sensibilities are not offended by vulgarity, obscenity and depravity; (v) the sovereignty and integrity of India are not called in question; (vi) the security of the State is not jeopardised or endangered; (vii) friendly relations with foreign States are not strained; and (ix) public order is not endangered, and to ensure that the film is judged in its entirety from the point of view of its overall impact; and is examined in the light of contemporary standards of the country and the people to whom the film relates. Objectives of film censorship are thus well pronounced. The medium of film must remain responsible and sensitive to the values and standards of society; (b) artistic expression and creative freedom are not unduly curbed; and (c) films must work for the social change, as envisioned

under the Constitution of India. The Supreme Court has in this judgment reiterated the observations as to pre-censorship and the extent of the legitimate restraint on the freedom of speech and expression in its earlier judgments in K.A. Abbas v. Union of India : [1971]2SCR446 ; Ramesh v. Union of India : [1988]2SCR1011 and Raj Kapoor v. Laxman : 1980 CriLJ436 and quoted such passages which are relevant and are as follows (at page 585 of [1989] 2 SCC) :

'The task of the censor is extremely delicate... The standards that we set out 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... The requirements of art and literature includes 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 moral man begins to feel embarrassed or disgusted at a 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, in much the same way, as it is wrongly said a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth (see K.A. Abbas v. Union of India : [1971]2SCR446).

That the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This, in our opinion, is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of an ordinary reasonable man or as they say in English law, 'the man on the top of a Clapham omnibus.' (See Ramesh v. Union of India : [1988]2SCR1011).

The ultimate censorious power over the censors belongs to the people and by indifference, laxity or abetment, pictures which pollute public morals are liberally certificated; the legislation, meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within'. (See Raj Kapoor v. Laxman : 1980 CriLJ436).

23. The censor in the instant case has exercised its functions and we are informed, granted to the appellants V/U certificate. The plaintiff-respondent, however, had already moved this court in the suit and the exhibition of the film has remained in abeyance for the reason of the injunction granted by the trial court. The grant of certificate by the censor, however, does not preclude the court's jurisdiction. The court, after all has to take notice of the grievance of the plaintiff-respondent and see whether he has been defamed or will the exhibition/publication defame him and whether it has caused or is likely to cause irreparable injury to it. It is not necessary in the instant case to examine whether the defendants-appellants as associations or trade unions have the freedom of speech and expression and the said freedom is protected under article 19(1)(a) of the Constitution or not. As individuals and citizens of India, workers and others who have taken interest in the matter concerning the management and labour relationship in the divisions and units of the plaintiff-respondent-company are entitled to the constitutional guarantee under article 19(1)(a) subject to the restrictions under article 19(2) of the Constitution and merely because they have joined together and formed an association the guarantee is not lost to them. We are supported in our view by the judgment of the Supreme Court in the case of *Bennet Coleman and Co. Ltd. v. Union of India*, : [1973]2SCR757 . The plaintiff-respondent is a company. Its complaint is that it is likely to be defamed by the publication/exhibition of the particular video film produced by the defendants-appellants. A judgment of the Court of Appeal in the case of *South Hetton Coal Co. Ltd. v. North-Eastern News Association Ltd.* [1891-94] All ER 548 has answered the question whether the action lies by the plaintiffs who are a corporation. In the words of Lord Esher M.R. :

'The law of libel is the same as regards all manner of parties, and that the question is always the same, namely, whether the jury are of opinion that the matter published would, with regard to the conduct of the plaintiff, lead persons of ordinary sense to look upon the plaintiff with hatred, contempt, or ridicule. That is always the question, whether the plaintiff is an individual, a firm, or a corporation. The application of that law is different, according to the different kinds of plaintiff. There are some kinds of the plaintiffs about whom things may be written which may lead ordinary people to entertain feelings of hatred, contempt, or ridicule, but

there are other kinds of the plaintiffs as to whom those same things could not lead people to entertain such feelings. For instance, if a man said that the manners of the plaintiff were grossly contrary to all proper sense of decency, that might lead ordinary people to entertain feelings of hatred, contempt, or ridicule towards him; if the same thing was said to the manners of a firm, or of a corporation, a firm or corporation cannot have manners, and in such a case, although the law is the same, the necessary conditions are wanting and the matter published is not a libel, because it could not lead to feelings of hatred, contempt, or ridicule towards a firm or corporation.

There are, however, things which may be said as to the conduct of the plaintiff, where the plaintiff is a firm or corporation, which may be libellous. For instance, if you say of a man engaged in business that he conducts his business like a foolish man, that is a libel upon him in his business, that is, upon him in respect of his conduct in his business. With respect to such a man, if you only say that his goods are bad, it is for the jury to consider whether this was so said as to imply that his conduct in his business was bad. For instance, if the plaintiff is a wine merchant, and you say that there is a bad vintage, and the wine of that vintage is bad with him and with all merchants, that is no reflection upon the plaintiff in his business, but is only a reflection upon the goods, and is not a libel upon the plaintiff. If such a statement as that is made maliciously, and does injure the plaintiff, it only gives rise to an action upon the case, and not to an action for libel. If you say of a wine merchant that he has been selecting bad wine, that is a reflection upon him in his business, and may be a libel upon him in his business that the statement reflected upon the goods only, there is no libel; but, if they find otherwise, there is a libel.

Then, with regard to a firm or a corporation, no exhaustive account can be given of the kinds of statement which are libellous, or are not libellous. The rule of law, however, is the same as in the case of an individual. If a firm or a corporation carries on a business, they may carry it on in such a way as to lead a person to say that they carried it on in a bad way. Such a statement would be a libel on the business, and the law is the same as in the case of an individual. That statement, if true, would lead an ordinary person to say that they managed their business in so inefficient a way as to lead people to entertain feelings of contempt or ridicule

towards them. It follows, therefore, that the law is the same in all respects in the case of a corporation and of an individual.'

24. Lord Esher M.R. agreed with the Lord Chief Justice that a fair comment upon a matter of public interest is not a libel at all, but if it is so exaggerated and florid a description that it could be called unfair, then it may be libellous. The House of Lords in *Derbyshire County Council v. Times Newspapers Ltd.* [1993] 1 All ER 1011, has reiterated this principle but has pronounced that (headnote) :

'Under common law a local authority did not have the right to maintain an action for damages for defamation as it would be contrary to the public interest for the organs of Government, whether central or local, to have that right. Not only was there no public interest favouring the right of Government organs to sue for libel but it was of the highest public importance that a governmental body should be open to uninhibited public criticism, and a right to sue for defamation would place an undesirable fetter on freedom of speech.'

25. The observations from the judgment in *South Hetton Coal Co. v. North-Eastern News Association Ltd.* [1891] All ER 548, have been quoted by Lord Keith of Kinkel in his main judgment that with regard to a firm or company it is impossible to lay down an exhaustive rule as to what would be a libel on them. But, the same rule is applicable to a statement made with regard to them. Quoting from other judgments, including one from the judgment in the case of *Bognor Regis UDC v. Campion* [1972] 2 All ER 61, he has commented (at p. 1017 of [1993] 1 All ER) :

'It is to be observed that Browne J. did not give any consideration to the question whether a local authority, or any other body exercising governmental functions, might not be in a special position as regards the right to take proceedings for defamation. The authorities cited above clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it. *South Hetton Coal Co. v. North-Eastern News Association Ltd.* [1891] All ER 548, would appear to be an

instance of the latter kind, and not, as suggested by Browne J., an authority for the view that a trading corporation can sue for something that does not affect it adversely in the way of its business. The trade union cases are understandable upon the view that defamatory matter may adversely affect the union's ability to keep its members or attract new ones or to maintain a convincing attitude towards employers. Likewise, in the case of a charitable organisation the effect may be to discourage subscribers or otherwise impair its ability to carry on its charitable objects. Similar considerations can no doubt be advanced in connection with the position of a local authority. Defamatory statements might make it more difficult to borrow or to attract suitable staff and thus affect adversely the efficient carrying out of its functions.

There are, however, features of a local authority which may be regarded as distinguishing it from other types of corporation, whether trading or non-trading. The most important of these features is that it is a governmental body. Further, it is a democratically elected body, the electoral process now-a-days being conducted almost exclusively on party political lines. It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech.'

26. and held as above that a plaintiff-local authority cannot bring an action for damages for defamation as it would be contrary to the public interest. Since the plaintiff-respondent is a trading company and it has something to say about its business and its relationship with its employees, it can sue if there are imputations which defame it for damages. It can do so notwithstanding the certificate for exhibition of the film granted to the appellants or the producers of the film by the censor board. The main question before us, however, is, can it maintain a suit for permanent injunction? If it can maintain a suit can it do so without any publication of the contents of the film and without the contents being before the court for scrutiny as they were before the censor board. It is significant also to bear always in mind that to the right regarding freedom of speech and expression under article 19(1)(a) of the Constitution, defamation or incitement to an offence is kept in the group of exceptions along with the sovereignty and integrity of India, the security

of the State, friendly relations with foreign States, public order, decency, morality and contempt of court and it is envisaged that the preservation of this right shall not affect the operation of any existing law or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the said right. Defamation has been recognised as a criminal offence and given a statutory definition under section 499 of the Indian Penal Code, 1860, in these words :

'Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person, in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.'

27. Explanation 2 above thus states :

It may amount to defamation to impute anything to a company or an association or collection of persons if the imputation would harm the reputation of the company or the association or collection of persons and is intended to be harmful...

28. Exceptions to the definition show :

(1) It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

(2) It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

(3) Expressing in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct and no further is not defamation.

(4) Publication of a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings is not defamation.

(5) Expression of opinion in good faith respecting the merits of any case civil or criminal which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further is not defamation.

(6) Expressing in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and so further is not defamation.

(7) Censure passed in good faith by lawful authority over another either conferred by law or arising out of a lawful contract made with that another is not defamation.

(8) Any accusation preferred in good faith against any person to any to those who have lawful authority over that person with respect to the subject matter of accusation is not defamation.

(9) Imputation made in good faith by person for protection of his or other's interests on the character of another provided that the imputation is made in good faith for the protection of the interests of the person making it, or of any other person or for the public good is not defamation.

(10) Putting to a caution in good faith one person against another provided that such caution is intended for the good of the person to whom it is conveyed or by some person in whom that person is interested or for the public good is not defamation.

29. Thus making or publishing any imputation concerning any person or a company or an association or collection of persons intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, company or association or collection of persons may constitute defamation unless it is an imputation of truth which public good requires to be made or published or is in respect of public conduct of public servants or conduct of any reports or proceedings of courts, or expression of opinion on the merits of a case decided in court or opinion as to conduct of witnesses and others concerned with the case or expression of opinion as to merits of public performance or respecting the character of the author so far as his character as appeared in such performance or censure passed in good faith by persons having lawful authority over another or accusation preferred in good faith to authorised persons or in good faith by a person for protection of his or other's interest or caution intended for the good of the persons to whom conveyed or for public good and may attract prosecution in a criminal court. In common law for civil action defamation includes both libel and slander and is comparable to an action in tort and thus for relief of damages either special or general. It is pointed out in Halsbury's Laws of England, third edition, volume 24, page 5, para 6 :

'A class of persons cannot be defamed as a class, nor can an individual be defamed by a general reference to the class to which he belongs.'

30. In Libel and Slander, fourth edition, by Gatley, at page 115, it is stated :

'Where the words complained of reflect on a body or class of persons generally such as lawyers, clergymen, publicans or the like, no particular member or body of persons can maintain an action.'

31. In Odger's Libel and Slander, 6th edition, at page 123, it is stated :

'The defamatory words must refer to some ascertained or ascertainable person and that person must be the plaintiff... So if the words reflect impartially on either A or B or on someone of a certain member of class, and there is nothing to show which one was meant, no one can sue.'

32. Referring to these authorities and dealing generally with defamation under section 499 of the Indian Penal Code, 1860, and examining as to who may be a person aggrieved to maintain a complaint for the alleged defamation in respect of an ashram, an incorporated body a learned single judge of the Calcutta High Court in the case of D.N. Sen v. R.K. Bhadra, : AIR1970 Cal216 , has pointed out the classical definition of the term 'defamation' given by Mr. Justice Cave in the case of Scott v. Sampson [1882] 8 QBD 491, as a 'false statement of a man to his discredit' and in Sim v. Stretch [1936] 52 TLR 669 , by Lord Atkin, 'would the words tend to lower the complainant in the estimation of the right thinking members of the society generally.'

33. And observed as follows (at page 221) :

'The concept of defamation is indeed a mixed concept partly subjective and partly objective and the institution of the proceedings must be against the background of section 198 of the Code of Criminal Procedure. Upon ultimate analysis, however, whether the impugned publication is defamatory or not is a question of fact and the same must abide a full-fledged trial.'

34. For the Indian Penal Code, 1860, thus, imputation by words either spoken or intended to be read or by visible representation is not an offence until it is proved to discredit a person in the eyes of others and the imputation is not covered by any of the exceptions. Civil action for damages is possible but only in cases where the court is satisfied about the ill-effect of the imputations. Preventive injunction can be

granted in a very exceptional case.

35. What has been brought under article 19(1)(a) of the Constitution as a right to freedom of speech and expression is restricted besides other matters as stated in article 19(2) of the Constitution by the existing law of defamation or incitement to an offence as in the Indian Penal Code, 1860, as well as under the common law which protects any person from any injury to his reputation. If any imputation concerning any person including a company or association or collection of persons which is a legal entity in itself is made or published intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, company or association or collection of persons and the maker or doer has no reason to think that he was publishing a truth which public good required to be made or published it may constitute defamation. If a false imputation is made and published and it is libellous per se, i.e., if the imputation on the face of it is false and injurious to the reputation of the persons about whom it has been made or published or libellous per quod or actionable per quod, i.e., if the allegations are proved as imputations damaging to the reputation of the aggrieved person a suit can be maintained by him for damages and in exceptional cases for injunction. A firm or company, we have already noticed is subjected to the same test as any other person but it is required to show that defamatory matters have caused or have a tendency to damage it in the way of its business or are likely to affect its reputation as an employer and thus affect the interest of the public. We have at least two judgments of the Supreme Court of India which need special mention before we proceed further. In the case of *Reliance Petro-Chemicals Ltd. v. Indian Express Newspapers (Bombay) Pvt. Ltd.* : AIR 1989 SC190 ; [1989] 66 Comp Cas 577, the Supreme Court has considered the case of the petitioner-company which had with a view to set up what was claimed to be the largest petrochemical complex in the private sector for the manufacture of critically scarce raw mat