

Gajanan P. Lasure and anr. Vs. the Central Board of Film Certification and ors.

Gajanan P. Lasure and anr. Vs. the Central Board of Film Certification and ors.

SooperKanoon Citation : sooperkanoon.com/922265

Court : Mumbai

Decided On : Aug-09-2011

Judge : D.D. Sinha; a.R.Joshi, Jj.

Acts : Central Board of Film Certification constituted under the Cinematograph Act, 1952 - Sections 3, 4, 5, 5A and 5B, 22(7); [Constitution of India](#) - Article 19(1), 19(2); Cinematograph (Certification) Rules, 1983 - Rule 41(4)(c), 22(7); Scheduled Castes And Scheduled Tribes (SC ST) Act -

Appeal No. : WRIT PETITION NO.6029 OF 2011

Appellant : Gajanan P. Lasure and anr.

Respondent : The Central Board of Film Certification and ors.

Advocate for Pet/Ap. : Mr.Sangharaj D. Rupwate; Mr.Milind Ingale; Mr.Santosh J. Parad, Advs.

Judgement :

1. Heard the learned counsel for the petitioners and the learned counsel for the respective respondents.

2. The counsel for the petitioners contended that the petitioners are practicing Advocates enrolled with the Bar Council of Maharashtra & Goa. They are also activists and closely associated with the social movement related to protecting the rights of Backward Classes, particularly Scheduled Castes and Scheduled Tribes. The petitioners have appeared in various matters before this Court and other Courts for various litigants and defended the cause of Backward Classes based on the policy of reservation mandated by the Constitution. The petitioners are members of the Scheduled Castes community.

3. The counsel for the petitioners has submitted that the respondent no.1 is the Central Board of Film Certification constituted under the Cinematograph Act, 1952 (hereinafter referred to as the "Act of 1952"). The respondent no.2 is the Regional Officer, Mumbai Region of the respondent no.1 Board. The respondent no.5 is the Producer and Director of Hindi feature film "Aarakshan". The respondent no.6 is the distributor of the film. The film is due for release on 12.8.2011. The respondent no. 7 is the National Commission for Scheduled Castes and the respondent no.9 is the State of Maharashtra.

4. The counsel for the petitioners has submitted that the petitioners are challenging the legality, propriety and validity of the Censorship Certificate issued by the Central Board of Film Certification (respondent no.1) for public exhibition of the film "Aarakshan". It is contended that the trailer and promos of the said film clearly show that it gives strong anti-reservation message which is contrary to the mandate of the Constitution and affects the basic structure of the Constitution. If the film is permitted to be released on due date, it is bound to create enmity, hatred, disharmony and ill-will amongst different castes and communities which is likely to disturb public peace and tranquility. The public exhibition of the film is also likely to incite commission of offence and would affect public order. It is, therefore, contended that the film "Aarakshan" should be banned and the certificate for exhibition granted by the Central Board of Film Certification be quashed and set aside.

5. The counsel for the petitioners has submitted that the Act of 1952 makes provision for certification of cinematograph films for exhibition and for regulating exhibitions. The Central Government has constituted the Central Board of Film Certification under section 3 of the Act of 1952. The provisions of sections 4, 5, 5A and 5B pertain to examination of films and sanction for public exhibition. It is submitted that as per section 5B of the Act of 1952, a film shall not be certified for public exhibition if, in the opinion of the competent authority, it is against public order, decency or morality. Hence, the film "Aarakshan" which is anti- reservation and release thereof is likely to affect public order, should not have been granted certificate for public exhibition or at least the parts of the film which are against the reservation policy or which are likely to incite the commission of an offence ought to have been directed to be removed/deleted from the film.

6. It is submitted that the grant of certificate of public exhibition apart from being illegal is also contrary to guidelines. The counsel for the petitioners fairly admitted that neither he nor the petitioners have seen the film and, therefore, unable to inform this Court which dialogue or portion of the film is objectionable and is likely to affect public order or likely to cause incitement to commit an offence. However, he submitted that looking to the trailers and promos of the film, it is loud and clear that the release of the film is bound to endanger public order. It is contended that the respondent no.4 has volunteered to screen the film to various politicians which is evident from the documents at exh.`A' to the affidavit dated 3.8.2011 filed by the petitioners. However, refusal by the respondent no.4 to arrange for screening of the film for the petitioners and their Advocates clearly demonstrates that the respondent no.4 does not want the objectionable dialogues and scenes of the film to be seen by the petitioners or their Advocates and, therefore, this is a fit case where this Court may issue directions to the respondent nos.4 and 5 to arrange for screening of the film to the petitioners and their Advocates. It is contended that if the film is not anti-reservation and does not give strong anti-reservation message and not likely to cause problem to public order as claimed by the respondent nos.4, 5 and 6, then the screening of the film for the petitioners and others could settle the controversy once and for all. However, the conduct of the respondents in

refusing to screen the film gives a message that since the film contains objectionable material, they do not want to screen the film for the petitioners and their Advocates. It is submitted that unless the film is screened, the objectionable part, if any, cannot be pointed out by the petitioners to the Court and, therefore, there can never be an effective adjudication on merits. The adjudication of these issues, after the release of the film would be futile and will not serve the public purpose. As against this, if the film is screened, no prejudice or damage or loss would be caused to the respondent nos.4, 5 and 6.

7. It is contented that the Censor Board has issued certificate for public exhibition to the film, however, as we have already pointed out that the action of grant of certificate in favour of the respondent no.4 by the Board by abdicating their constitutional, statutory as well as mandatory public duty, will jeopardise public interest and, therefore, this is a fit case where this Court should issue direction to the respondent nos.4 and 5 to arrange for screening of the film for the petitioners and their Advocates. In order to substantiate this contention, reliance is placed on the decision of the Apex Court in *K.A. Abbas v. The Union of India & Anr.* (1970 (2) SCC 780).

8. Mr. Chavan, the learned counsel for the respondent nos.1, 2 and 3, has submitted that the respondent no.1 has received the letter dated 29.6.2001 from the National Commission for Scheduled Castes, New Delhi, stating:-

"The NCSC apprehends that there may be violation of provisions of SCs/STs Act in the movie

"Aarakshan" on account of connotation of its name (Title). In this connection the Chairman of NCSC has desired that a team of this Commission may watch this movie to see whether there is any objectionable material in this movie which may hurt the feelings of the concerned sections of the society. Therefore, CBFC is requested to arrange for its Review in any theatre/venue in Delhi for the NCSC team before its release".

Mr.Chavan for the respondent nos.1 to 3 has submitted that in response to the said letter of the NCSC, the C.E.O. Of the respondent no.1 vide letter dated 15.7.2011 wrote to the NCSC which reads thus:- "Please refer to your letter dated 29th June 2011 and a subsequent reminder dated 13.07.2011 on the subject- Preview of film Aarakshan. With regard to NCSC's request for preview of the film "Aarakshan", the matter has been examined. It may be appreciated that the Central Board of Film Certification (CBFC) is a quasi-judicial body appointed as per the Cinematograph Act 1952 and the rules framed thereunder. It previews the films solely for the purpose of certification and as per the rules and guidelines contained in the said Act. Film Certification is a quasi-judicial function performed by the Examining Committee members who are selected by Government of India from different strata of society. There has been no precedence as such of involving any statutory body in the film certification process nor is there any statutory provision in the Cinematograph Act for this. However, CBFC appreciates the concerns of Chairman, NCSC. The Examining Committee has thus been constituted keeping in mind the title of the film and its perceived theme. The EC members have been suitably advised by Chairperson, CBFC, to follow the guidelines contained in the Cinematograph Act, 1952. While keeping the spirit of Article 19(1) of the [Constitution of India](#) alive the EC members will try their best to ensure that no community is shown in adverse light and derogatory references to any person/community/organisation are not permitted to be shown in the film in accordance with the law laid down by the Hon'ble Supreme Court of India."

9. The learned counsel for the respondent nos.1 to 3 contended that Ms Leela Samson, Chairperson of CBFC, after discussing the issue, as per the provisions of rule 41(4)(c) of the Cinematograph (Certification) Rules, 1983 (hereinafter referred to as the "Rules of 1983") decided to invite legal expert and an expert related to the Dalit movement when the Examining Committee previews the film. The C.E.O. of CBFC constituted the Examining Committee consisting of the following members:-

(a) Smt.L. Meena (ST category).

(b) Smt.J.S. Kamble (SC category).

(c) Shri N.S.Bansode (SC category).

(d) Shri R. Tanawade (OBC category).

The Chairperson also requested the Retired Chief Justice of Punjab & Haryana High Court Mr.Justice Mukul Mudgal and a dalit activist and writer Ms Rajni Tilak to remain present during the preview as experts. As per section 22(7) of the Act of 1952, the Chairperson also nominated a Board Member Mr.Pankaj Sharma to be present during the preview to render such assistance as might be required.

10. Mr.Chavan for the respondent nos.1 to 3 has further contended that the preview of the film was held in Mumbai on 18.7.2011 by the Examining Committee members. Two experts mentioned hereinabove were also present at the time of preview as well as Board member Mr.Pankaj Sharma. It is contended that after the screening of the film was completed, the Examining Officer on behalf of the Screening Committee asked two experts to give their opinion as to whether there were any violation of the provisions of the SC/ST Act and whether any sentiments of any particular community or class were deliberately or otherwise hurt because of the film. Two experts responded in the negative. After obtaining the opinion of the two experts, the Examining Committee then held deliberations on the film within the parameters of the relevant provisions of the Act of 1952 and the Rules made thereunder as well as the guidelines for certification framed under sub-section (2) of section 5B of the Act of 1952. After considering these aspects as well as the law pertaining to the issue in question, the Examining Committee unanimously decided to give "U/A" certificate to the film under the theme category "social". The Examining Committee, however, proposed deletion of the word "dalit" from a dialogue in reel no.1 of the said movie. The producer was called for hearing and the EC's decision was conveyed to him by the Examining Officer. The producer agreed to delete "dalit" from the dialogue and requested for treating this as a "voluntary cut" which was accepted by the EC. Mr.Chavan for the respondent nos.1 to 3 has submitted that the CBFC, after taking into consideration the

sentiments and apprehension expressed by the National Commission for Scheduled Castes, New Delhi, took special caution while forming the Examining Committee and ensured that all four members of the Examining Committee are belonging to the reserved category. The CBFC also took care and caution by inviting two experts for preview of the said movie so as to ensure that while the producer's right to freedom of speech and expression under the [Constitution of India](#) is duly protected, the visuals or the vocal dialogues in the film do not violate the provisions of the SC/ST Act as well as the sentiments of any or a particular class or community are deliberately or otherwise hurt. It is submitted that having taken such sound measures to ensue that there are no violations of any guidelines for certification of the film framed under sub-section (2) of section 5B of the Act of 1952 and also no violation of the SC/ST Act, the petitioners' contention that the film's title or theme contains material that may violate the provisions of the SC/ST Act is certainly untenable and without any basis. Similarly, the apprehension expressed by the counsel for the petitioners also does not have any foundation. In order to substantiate this contention, reliance is placed on the decision of the apex Court in *S. Rangarajan v. P. Jagjivan Ram & Ors.*[(1989) 2 SCC 574].

11. The learned counsel for the respondent nos.1 to 3 has submitted that the petition is filed only on the basis of trailers and promos of the film "Aarakshan" and on the basis thereof, the petitioners have apprehended that the film gives strong anti-reservation message, contrary to the mandate of the Constitution and bound to create enmity, disharmony and likely to disturb public tranquility. However, the petitioners have not given any single instance of any visual or a dialogue that they have come across while viewing promos or advertisements which are objectionable and would lead to causing disharmony, peace and tranquility in our society. The statements made in the petition are not based on any factual material or concrete substance that would support the claim of the petitioners. It is, therefore, contended that the petitioners have not been able to make out a case that the respondent no.1 has failed in its duty to take due and proper steps as per the provisions of the Act of 1952 and the Rules of 1983, while granting "U/A" certificate for exhibition of the film and, therefore, there is no case made out by the

petitioners for issuing direction to screen the film for the petitioners and their Advocates. On the other hand, the petition may be dismissed being without merit.

12. Mr.Dhond, the learned counsel for the respondent nos.4 and 5, has submitted that the preliminary submission is that neither the film nor the promos are even remotely anti-reservation and/or anti-dalit. The issue of reservation has been used in the film only as a landscape or back drop on which the story and journey of the protagonist, who is the Principal of an institution, is based. The central theme of the film and its message is the commercialisation of education system in the present society. The petitioners who have not seen the film have rushed to the Court on imaginary and illusory apprehensions. Once the petitioners view the film, upon its release on 12.8.2011, these apprehensions will not survive.

13. Mr.Dhond for the respondent nos.4 and 5 has submitted that the certification of the film for public viewing is a specialised task which has been statutorily entrusted to a specialised body specially created for this very purpose. It is the Censor Board which is required to be satisfied about the suitability and unsuitability of a film for public viewing. The Censor Board has set up several Committees, whose members are persons coming from different walks of life and the field of cinema. The Central Board has specialised expertise in drawing a delicate balance between the constitutionally guaranteed freedom of expression and the constitutionally and statutorily recognized (limited) areas of regulation. The grounds of judicial review in such cases are, therefore, extremely limited and unless the Court finds manifest unreasonableness amounting to perversity, the decision of the Censor Board ought not to be interfered with. The learned counsel for the respondent nos.4 and 5 has further contended that the film and each of 35 promos has been duly certified for public exhibition in accordance with the provisions of the Act of 1952 and has been granted U/A certificate by the Censor Board on 15.6.2011. Similarly, considering the sensitivity of the subject of the film and in response to the press note dated 6.7.2011 issued by the National Commission for Scheduled Tribes, in an unprecedented move, the Censor Board set up a Committee of Experts who has examined the film. The Examining Committee comprised of four members belonging to Scheduled Castes,

Scheduled Tribes and Other Backward Classes, two distinguished Experts in their respective fields and one nominated member who is the Regional Head of the respondent no.1 previewed the film and, thereafter, U/A certificate was granted to the film by the Board. The decision of the Board to grant U/A certificate to the film was taken after following due process and considering all relevant criteria. It is contended that there is no embargo in law against making a film which comments on the reservation policy.

This issue is no longer *res integra* and is covered by the decision of the Supreme Court in *Jagjivan Ram's case* (*supra*) wherein the Apex Court has held that objection cannot be taken to a film which delivers an anti- reservation message.

14. The learned counsel for the respondent nos.4 and 5 has contended that the respondent no.5 is known for his political and socio-political films and is also the maker of ten National Film Award winning documentaries. His film "Damul" won the "Golden Lotus" award which is the highest National award for a feature film which portrays the persecution of a dalit at the hands of a high caste landlord. It is contended that the restraint on exhibition of the film which has been certified for public exhibition in accordance with the provisions of the Act of 1952 would violate the fundamental rights of these respondents guaranteed under the Constitution not only limited to fundamental right of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The film is a medium to express one's opinion and is thereby inclusive of freedom of communication and right to propagate public opinion. Freedom of expression is constitutionally protected and cannot be taken away by people like the petitioners. It is well-settled that the fundamental right to freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) of the Constitution and such restriction must be justified and sustainable in law.

15. The learned counsel for the respondent nos.4 and 5 has further submitted that prayer of revocation of censorship certificate granted by the Board to the film at the instance of the petitioners who have admittedly not seen the film is not warranted. The petitioners have not cited any specific instance of dialogue, etc., in

the petition which is objectionable and, therefore, the limited prayer which is made by the petitioners at this stage to issue a direction to the respondents to screen the film for the petitioners and their Advocates in the absence of any material and in the facts and circumstances of the case is also misconceived.

16. We have given our anxious thoughts to the various contentions canvassed by the respective counsel for the parties and the decision of the Apex Court relied upon by them and also perused the relevant provisions of the Act of 1952 and the Rules of 1983.

17. In the instant case, the following facts are not in dispute:- (i) Film "Aarakshan" was submitted on 12.7.2011 to the respondent no.1 for certification.

(ii) Chairperson of CBFC Ms Leela Samson as per the provisions of rule 41(4)(c) of the Rules of 1983 invited legal expert Retired Chief Justice of Punjab & Haryana High Court Mr. Justice Mukul Mudgal and another expert who is related to Dalit movement when the Examining Committee previewed the film.

(iii) All the four members of the Examining Committee were members belonging to SC/ST or OBC category. As per rule 22(7) of the Rules of 1983, Chairperson of CBFC nominated a Board Member (as referred to hereinabove) who was asked to remain present during the preview of the film.

(iv) After the screening of the film was completed, the Examining Officer on behalf of the Screening Committee asked two experts to give their opinion whether the film as a whole or any part thereof violates the provisions of the SC/ST Act or sentiments of any particular community or class were deliberately or otherwise hurt. (v) Both the experts opined in the negative.

(vi) The Examining Committee decided to give U/A certificate to the film under the theme category "social".

(vii) The Examining Committee members proposed deletion of the word "dalit" from the dialogue in reel no.1 of the film which was deleted from the said dialogue by the producer of the film which was treated as a "voluntary cut".

(viii) Admittedly, the petitioners have not seen the film and the petition is based on trailers and promos and the apprehension of the petitioners that the release of the film is likely to create enmity between caste or community or likely to disturb public tranquility or would jeopardise public order is based on trailers and promos of the film.

(ix) In the petition, the petitioners have not cited any specific instance or dialogue or contents of the film or promos which is/are likely to disturb public tranquility or would adversely affect public order.

18. In the back drop of the above referred undisputed facts, the question which falls for our consideration at this stage is whether the petitioners have made out a case for issuing a direction to the respondents to arrange for screening of the film for the petitioners and their Advocates.

19. It will be appropriate to consider the law on the subject before we answer the questions involved in the present case. The law declared by the Apex Court on the subject by three-Judge Bench of the Supreme Court in Jagjivan Ram's case (supra) is relevant to resolve the issues involved in the present Writ Petition.

20. The observations made by the Apex Court in paragraphs 8, 12, 13, 14, 15, 16 and 17 of the judgement in Jagjivan Ram's case clearly demonstrate that the Act of 1952 which permits censorship of movies is a comprehensive enactment and there is a well drawn procedure stipulated therein which is required to be followed before certificate of public exhibition is granted to the film. The scheme of the Act of 1952 and the Rules of 1983 requires the authorities to follow a specific detailed and comprehensive procedure and is also duty bound to ensure that the maker of the film remains responsible and sensitive to the values and standards of society, including responsible to social change. It is also evident that the censorship is permitted mainly on the social interest such as 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, keeping in view the mandate of Article 19(2) of the Constitution. It is, therefore, clear that the

Cinematograph Act of 1952 as well as the Rules of 1983 is not only a comprehensive Code in itself and requires the Board to examine the film by following a particular procedure stipulated in the said Act and the Rules, but the Board also is required to keep in mind the purport of Article 19(2) of the Constitution and only after being satisfied and can ensure, that the anti-social activities are not glorified or unjustified in the film, visuals or words not likely to incite the commission of any offence are depicted in the film, avoidable scenes of violence, cruelty and horror are not shown in the film and sovereignty or integrity of India is not called in question, security of the State is not jeopardised or endangered, friendly relations with Foreign States, public order, decency or morality is not affected and it does not incite people to commit an offence, appropriate certificate for public exhibition is granted to the film.

21. Insofar as the issue involved in the present case is concerned, the relevant observations made by the apex Court in paragraphs 34, 35 and 36 read thus:-

"34. We find it difficult to appreciate the observations of the High Court. We fail to understand how the expression in the film with criticism of reservation policy or praising the colonial rule will affect the security of the State of sovereignty and integrity of India. There is no utterance in the film threatening to overthrow the Government by unlawful or unconstitutional means. There is no talk for secession either. Nor there is any suggestion for impairing the integration of the country. All that the film seems to suggest is that the existing method of reservation on the basis of caste is bad and reservation on the basis of economic backwardness is better. The film also deprecates exploitation of people on caste considerations. This is the range and rigor of the film.

35. The High Court, however, was of opinion that public reaction to the film, which seeks to change the system of reservation is bound to be volatile. The High Court has also stated that people of Tamil Nadu who have suffered for centuries will not allow themselves to be deprived of the benefits extended to them on a particular basis. It seems to us that the reasoning of the High Court runs a foul of the democratic principles to which we have pledged ourselves in the Constitution. In

democracy it is not necessary that every one should sing the same song. Freedom of expression is the rule and it is generally taken for granted. Every one has a fundamental right to form his own opinion on any issue of general concern. He can form and inform by any legitimate means.

36. The democracy is a Government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value." The Supreme Court in paragraphs 50 and 51 of the judgement has 23 wp6029.11Final observed thus:

"50 This takes us to the validity of the plea put forward by the Tamil Nadu Government. In the affidavit filed on behalf of the State Government, it is alleged that some organisations like the Tamil Nadu Scheduled Castes/Scheduled Tribes People's Protection Committee, Dr. Ambedkar People's Movement, the Republican Party of India have been agitating that the film should be banned as it hurt the sentiments of people belonging to Scheduled Caste/Scheduled Tribes. It is stated that the General Secretary of the Republican Party of India has warned that his party would not hesitate to damage the cinema theatres which screen the

film. Some demonstration made by people in front of "The Hindu" office on March 16, 1988 and their arrest and release on bail are also referred to. It is further alleged that there were some group meetings by Republican .Party members and Dr. Ambedkar People's Movement with their demand for banning the film. With these averments it was contended for the State that the exhibition of the film. will create very serious law and order problem in the State.

51. 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 a surrender to black mail 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 25 wp6029.11Final problem. It is its obligatory duty to prevent it and protect the freedom of expression."

22. A plain reading of the observations made by the Apex Court in paragraphs 34, 35, 36, 50 and 51 would show that the expression in the film with criticism of reservation policy or praising the colonial rule or the existing method of reservation on the basis of caste is bad and reservation on the basis of economic backwardness is better or deprecation of exploitation of people on caste considerations would not brand the film as objectionable or would result in affecting public order, decency or morality or incite people to commit offence if that is the theme and soul of the film. Similarly, merely on the basis of allegations and apprehensions that some organization would agitate, the State Government can abdicate its fundamental duty to establish rule of law and protect the freedom of expression since the State cannot plead its inability to establish rule of law. In the instant case, it is not in dispute that neither the learned counsel for the petitioners nor the petitioners have seen the film and the apprehension is expressed on the basis of trailers and promos of the film without even mentioning any instance or dialogue in them which is likely to create disharmony in the society or likely to affect public order or incite people to commit offence. It is also not the grievance of the petitioners that the Central Board of Film Certification did not follow a particular statutory procedure provided in the Act of 1952 or the Rules of 1983 before granting U/A certificate to the film. On the other hand, in the instant case, apart from four members of the Examining Committee who belonged to either SC or ST and OBC category, very distinguished experts in their respective fields were also invited at the time of purview of the film and one person of the Board was also

nominated to be present at the time of purview of the film. It is the case of the respondents that the experts have opined that the film does not violate the provisions of the SC/ST Act as well as there is no likelihood of sentiments of any particular community or class will be hurt. It appears that the Board thereafter with due deliberations and keeping in view the object of the Act of 1952 and the Rules of 1983 was satisfied that the film and the promos thereof is/are fit for public exhibition and issued U/A certificate to the film. Merely because an apprehension is expressed by the petitioners based only on trailers and promos of the film, even without citing any incident or dialogue either from the film or trailer/promos of the film which would show that the release of the film would endanger public order or incite people to commit offence, it is, therefore, evident that the directions sought by the petitioners for screening of the film for them is only based on anticipation of violence and presumptions that some agitations and protests are likely to take place on release of the film, this is, in our view, too far-fetched and illusory. In the absence of any specific material or evidence to come to such conclusion as well as without there being any grievance about the procedure adopted by the authorities before issuing U/A certificate to the film, the grievance of the petitioners is wholly misconceived. We want to express that in the absence of any grievance regarding the procedure adopted by the Board, it is not possible to presume that the Board did not take into consideration the object of the Act of 1952 and the Rules of 1983 and certified the film by ignoring the guidelines framed by the Central Government for Censor Board. On the other hand, in the absence of challenge to the procedure, it can safely be inferred that the Board considered the objectives of the Act of 1952 and after following the due procedure stipulated as per the provisions of the Act of 1952 and the Rules of 1983, with due care and deliberations, keeping in view the spirit of Article 19(1)(a) and 19(2) of the [Constitution of India](#), issued the certificate in favour of the film "Aarakshan" for public exhibition, including its promos.

23. The apex Court in paragraph 52 of the judgement in Jagjivan Ram's case finally concluded the issue by observing thus:-

"52. In this case, two Revising Committees have approved the film. The members thereof come from different walks of life with variegated experiences. They represent the cross section of the community. They have judged the film in the light of the objectives of the Act and the guidelines provided for the purpose. We do not think that there is anything wrong or contrary to the Constitution in approving the film for public exhibition. The producer or as a matter of fact any other person has a right to draw attention of the Government and people that the existing method of reservation in education institutions overlooks merits. He has a right to state that reservation could be made on the basis of economic backwardness to the benefit of all sections of community. Whether this view is right or wrong is another matter altogether and at any rate we are not concerned with its correctness or usefulness to the people. We are only concerned whether such a view could be advocated in a film. To say that one should not be permitted to advocate that view goes against the first principle of our democracy."

24. A plain reading of the observations of the Apex Court in paragraphs 51 and 52 of the judgement in Jagjivan Ram's case would show that the freedom of expression cannot be suppressed on account of threat of demonstrations, processions or violence likely to take place on release of the film and it is the duty of the State to protect the freedom of speech and expression which is fundamental right not only given by the Constitution but is also guaranteed by the Constitution and, therefore, the State cannot show its inability to establish the rule of law on account of threat of demonstration or violence by a section of the society. The Examining Committee after conducting preview of the film and after taking opinion of the experts granted certificate of public exhibition to the film "Aarakshan". The Board is the only appropriate authority who has a right to judge the film in the light of the objectives of the Act of 1952 and the Rules of 1983 as well as the guidelines provided for this purpose and in the absence of any evidence and material to show that the decision taken by the Board is contrary to the provisions of the Act of 1952, the Rules of 1983 or against the spirit of Article 19(2) of the Constitution, the request made by the petitioners for issuing a direction to the respondents to screen the film for them and their Advocates, in our view, is wholly misconceived.

25. In the instant case, this Court on 3.8.2011 passed an order in the present Writ Petition wherein it is observed that the petitioners have expressed that if the film is permitted to be released, apart from the objectionable part in the film which will hurt sentiments of a particular section of the society, there is a likelihood of law and order problem in the State and, therefore, this Court directed the counsel for the State to seek instructions from the Department of Home, Government of Maharashtra, in this regard. The learned Govt. Pleader, on the basis of instructions given to him by the Joint Secretary, Department of Home, Government of Maharashtra, has made a statement before this Court on 5.8.2011 that the State Government is well equipped to deal with any kind of situation and shall take care of problem pertaining to law and order. In view of this categorical statement made by the learned Govt. Pleader for the State, there is no reason for the petitioners to think otherwise. In any case, the threat of procession, demonstration or violence cannot be the ground to suppress the freedom of speech given and guaranteed by the Constitution to all the citizens of this country and the State is duty bound to take care of the issues pertaining to law and order, public order and must ensure that the rule of law is firmly established.

26. We would like to express that so far as the fundamental right regarding freedom of speech and expression given and guaranteed under Article 19(1)(a) of the Constitution, it is no doubt subject to the power of imposing reasonable restrictions by the State on the exercise of right conferred by clause (1), in the interest of the 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 people to commit an offence. However, it is for the aggrieved person to establish that the individual citizen or class of citizens while exercising their fundamental right of freedom of speech and expression has/have affected, or it is likely to affect the sovereignty and integrity of India, security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court or defamation and would likely to incite the people to commit an offence. On the back drop of this legal position, it is for the petitioners in the present case to demonstrate how the film,

trailers or promos of the film "Aarakshan" are objectionable and if the film is permitted to be released, would affect the 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 would incite the people to commit an offence. The petitioners have not placed before this Court any material whatsoever or evidence of any kind to hold that the film is wholly or any part thereof is likely to create problem of law and order or public order. Similarly, the petitioners have not even made a reference in the petition about any dialogue or any incident in the film or promos likely to cause problem to public order, except expressed apprehension that there will be protest, processions and violence if the film is permitted to be released. Firstly, this apprehension is based on no evidence and, secondly, as per the law declared by the Apex Court in Jagjivan Ram's case, even if these apprehensions relating to protests, processions and violence are true, that cannot be the ground to suppress fundamental right to freedom of speech and expression. Therefore, in our view, the petitioners have not made out any case for issuance of direction to the respondents to arrange a special screening of the film for them and their Advocates before its release.

27. The learned counsel for the petitioners, in order to substantiate his contentions, relied on the decision of the Apex Court in the case of Abbas (supra). However, it is difficult for us to appreciate how the decision of the Apex Court in Abbas's case supports the case of the petitioners. In Abbas's case, the petitioner was a journalist and playwright and as a playwright was seeking a declaration against the Union of India and the Chairman, Central Board of Film Censors, that the provisions of Part II of the Act of 1952, together with the Rules prescribed by the Central Government, February 6, 1960, in the purported exercise of its powers under section 5-B of the Act are unconstitutional and void. The petitioners, therefore, asked for a writ of mandamus or any other appropriate writ, direction or order quashing the direction for deletion of certain shots from a documentary film entitled 'A Tale of Four Cities' produced by him for unrestricted public exhibition. The petitioners in the said petition also challenged pre-censorship itself as offensive to freedom of speech and expression and alternatively the provisions of

the Act and the Rules, orders and directions under the Act, as vague, arbitrary and indefinite. The other challenges raised by the petitioner were (a) that pre-censorship itself cannot be tolerated under the freedom of speech and expression; (b) that even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action; (c) that there must be a reasonable time-limit fixed for the decision of the authorities censoring the film; and (d) that the appeal should lie to a Court or to an independent Tribunal and not the Central Government. Point nos.(c) and (d) were conceded by the Solicitor General. The Apex Court in Abbas's case, in concluding paragraph 52, has observed thus:-

"52. It was for this purpose that this Court was at pains to point out in Ranjit D. Udeshi's case certain considerations for the guidance of censorship of books. We think that those guides work as well here. Although we are not inclined to hold that the directions are defective in so far as they go, we are of opinion that directions to emphasize the importance of art to a value judgment by the censors need to be included. Whether this is done by Parliament or by the Central Government it hardly matters. The whole of the law and the regulations under it will have always to be considered and if the further tests laid down here are followed, the system of censorship with the procedural safeguards accepted by the Solicitor General will make censorship accord with our fundamental law."

28. It is, therefore, evident that the issue involved and the law declared by the Apex Court in Abbas's case does not lend any support to the case of the present petitioners which is based on completely different issues and the challenge raised in the present petition is also entirely different and distinct than the one raised in Abbas's case.

29. For the reasons stated hereinabove, we are of the view that the prayer made by the petitioners for issuance of direction to the respondents to arrange for a special screening of the film "Aarakshan" before its release, which is due on 12.8.2011, being wholly misconceived and devoid of merit, the same is rejected and, therefore, we answer the question in the negative.