

**Krishna Mishra and Another Vs. Central Board of Film Certification and Others**

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**Court :** Mumbai

**Decided On :** Sep-28-2012

**Judge :** The Honourable Dr. Justice D.Y. Chandrachud & a.a. Sayed

**Appeal No. :** Writ Petition No.2006 of 2012

**Appellant :** Krishna Mishra and Another

**Respondent :** Central Board of Film Certification and Others

**Judgement :**

**Oral Judgment: (DR. D.Y. Chandrachud, J.)**

Rule, by consent made returnable forthwith. Counsel appearing on behalf of the Respondents waives service on behalf of the Respondents. By consent, the Petition is taken up for hearing and final disposal.

2. The First Petitioner is the writer and director of a film by the name of 'Beehad - the Ravine'. The Second Petitioner is the producer of the film. The controversy in these proceedings relates to the certification, initially granted by the Central Board of Film Certification (CBFC) and modified in appeal by the Film Certification Appellate Tribunal (FCAT) in respect of (i) the trailer; (ii) songs; and (iii) promos.

3. Now as regards the trailer, the CBFC granted an 'A' certification with three cuts. The FCAT has in appeal maintained the 'A' certification but with only one of the three cuts. In other words, the other two scenes which were found to be objectionable by the CBFC have been allowed. Scene 2 has been directed to be excised.

4. As regards the songs, the CBFC had granted 'A' certification in respect of song Nos.2, 3 and 4 and a certification of 'U/A' in respect of song No.5. The FCAT has maintained the 'A' certification in respect of song Nos.2, 3 and 4. There was no appeal in respect of Song No.5.

5. As regards the promos, the CBFC had granted 'A' certification in respect of all the three, while the FCAT has altered the certification to 'U/A'.

6. The grievance of the Petitioners is that no reasons were indicated either by the CBFC in the original order or by the FCAT in appeal. According to the Petitioners, reliance was placed before the FCAT on several other songs in films which have been released for public exhibition. Those songs, it was submitted, involved scenes or, as the case may be, lyrics which are more explicit or suggestive than those in the songs in the present case.

7. Rule 22(8) of the Cinematograph (Certification) Rules 1983 requires the Examining Committee to examine the film having regard to the principles for guidance in certifying films specified in Section 5B(1) of the Cinematograph Act 1952 and the guidelines issued by the government under Section 5B(2). Sub-rule (9) stipulates that immediately after the examination of the film each member of the Examining Committee is required before leaving the preview theatre to record his opinion spelling out in clear terms the reasons for the opinion. After the screening of the film, the examination officer has to ensure that the recommendation of every member of the committee is recorded in unambiguous terms and each modification is properly specified in clear terms with reason or reasons thereafter.

8. In our view, the requirement of recording reasons is an important safeguard. Where the fundamental right to the freedom of speech and expression under

Article 19(1)a is involved, any regulation of that right has to be strictly in conformity with the governing principles of law and any restriction of that right must be confined to what is reasonable and subject to the requirements of Article 19(2) of the Constitution. The recording of reasons ensures that the exercise of certification is not arbitrary. This must equally apply to the appellate process before the FCAT. We do appreciate that matters involving the certification of films also depend in a large measure on an appreciation of the visual impact of the film and in many cases it may not be possible to catalogue those reasons in very great detail. The process of certification has to be expeditious, which may require that reasons have to be brief. Time is of the essence where the certification involves an artistic theme of topical relevance. But equally, without allowing the process of recording reasons to partake of the character of a formal judgment in a Court of law, it is necessary that the basic reasons on the basis of which a certification is issued or, denied must be recorded. As a matter of fact, the guidelines which have been framed by the Union Government in exercise of powers conferred by Section 5B(2) of the Cinematograph Act 1952 specify the criteria which have to be borne in mind in the process of certification. The fact that the criteria have been duly considered by the certifying authority and in appeal by the Appellate Tribunal can only emerge from the reasons which have been spelt out in the decision.

9. In the present case, for instance, the grievance of the Petitioners is that whereas songs containing explicit lyrics or depictions have been cleared for certification in other cases, song Nos.3 and 4 in the present film have not been cleared for universal exhibition. Such a grievance of arbitrariness can be obviated by the recording of reasons. A small producer who produces a low budget film should not have an apprehension or perception that his artistic project has not met the same standards that are applied to films with more 'reputed' producers or large budget films. We have made this observation specifically in the context of the grievance of the Petitioners that they have not been treated evenhandedly.

10. As regards the promos, it emerged during the course of the hearing that the Petitioners are not seriously aggrieved by the 'U/A' certification.

11. Since neither the certifying authority viz. the CBFC nor the Appellate Authority have indicated any reasons whatsoever, it would not be possible for this Court to substitute its opinion for that which has been formed by the Appellate Authority. Hence, we are of the view that it would be necessary to set aside the order passed by the CBFC and FCAT in respect of the trailer and song Nos.3 and 4, since the challenge is now confined only to that extent. As regards the trailer, Counsel appearing on behalf of the Petitioners submitted that if the second scene which has been excised by the FCAT is maintained, the Petitioners would have no grievance with the 'A' certification. As regards song Nos.3 and 4, the CBFC shall also reconsider the certification having regard to the observations which have been contained in the earlier part of this order. Since the grievance of the Petitioners specifically is in regard to the lack of evenhanded assessment, we would leave it open to the Petitioners to draw the attention of the authority to the sequence of other songs which have been released for public viewing so as to establish a level of parity that the Petitioners seek to assert. With these observations, and to the extent aforesaid, we set aside the certification granted by the CBFC in respect of the trailer and in respect of song Nos.3 and 4 and remit the proceedings back for a fresh consideration. On remand, the CBFC shall arrive at its determination within a period of one week from the date on which an authenticated copy of this order is produced before it. Rule is made absolute with these observations.

There shall be no order as to costs.

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