
(2015) 02 MAD CK 0517

In the Madras High Court

Case No : Writ Petition (MD) No. 1406 of 2015 and M.P.(MD) No. 1 of 2015

Bharathi Kannamma

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Citation : (2015) WritLR 719

Hon'ble Judges : Sanjay Kishan Kaul, C.J;S. Tamilvanan, J

Bench : Division Bench

Advocate : A. Rajini, for the Appellant

Final Decision : Disposed off

Judgement

Sanjay Kishan Kaul, C.J—The petitioner has filed the present petition as a Public Interest Litigation seeking a direction to the Central Board of Film Certification/ Second respondent to revoke the censor certificate for public exhibition issued to the Tamil Feature Film "I" stated to be produced by the third respondent and directed by the fourth respondent. The petitioner claims to be a transgender running a Trust, working towards empowerment of transgenders. It is averred that transgenders are alienated from their own family and community and referred to derogatory slang used to humiliate and intimidate the transgenders with double meaning words being used. It has been emphasised that the rights of the transgenders to be recognised as a "third gender" are now predicated under the Judgment of the Hon"ble Supreme Court in National Legal Services Authority Vs. Union of India (UOI) and Others, AIR 2014 SC 1863 : (2014) AIRSCW 2285 : (2014) 5 JT 182 : (2014) 5 SCALE 1 : (2014) 5 SCC 438 . It is alleged that recently during Pongal festival, the movie "I" was released where transgenders have been depicted in vulgarity and their human dignity has been abused. The examples of these are stated to be inter alia, the main villain character being transgender, the room in which the transgender stays is shown as "9", the comedian using abusive words against the Villain and singing of a song. The petitioner claims to have made representation on 23.01.2015 to the

respondents for revocation of the censor certificate, but contends that the petitioner may not have to wait for a decision on such representation, in view of the apparent allegation made and the failure of the second respondent to exercise statutory powers under Section 9 of the Cinematograph Act, 1952.

2. Learned counsel for the petitioner has also referred a Division Bench Judgment of this Court in *Ms. A. Arulmozhi Vs. The Govt. of India and Others*, AIR 2006 Mad 49 : (2005) 3 MLJ 497 , more specifically paragraph - 49 where it has been observed that though a representation has been sent in that case to the authority concerned for invoking revisional powers under Section 6 of the Cinematograph Act, it is still open to the parties to approach the Court of Law for revocation.

3. We have heard the learned counsel for the petitioner and endeavoured to persuade her to see reason behind the philosophy that an expert body itself should examine such matters. This is so as what is the vulgar or obscene itself is very subjective and may vary from person to person. Learned counsel however submits that since the very human rights of the transgenders are in question, she would not like to wait for the decision of the second respondent, even though she has still not filed an application under Section 6 of the said Act, but only made a representation.

4. We have no doubt that if something is offending the human rights or existence of the transgenders, the same needs protection. This view is reinforced by the Judgment of the Hon'ble Supreme Court in *National Legal Services Authority* case cited supra. However, this has to be equally balanced with right of freedom of speech and expression, more so in matters of literary and artistic works. The representation in films includes an aspect of dramatisation and thus different parameters apply. This ofcourse does not mean licence to exhibit anything and that is why a specialised body has been constituted under the said Act. The specialised body consists of persons of the field and other eminent people in different social fields, so that there is an overall check and balance. The objective thus is that while over sensitivity is not to be protected, there is no absolute license, which may amount to derogation of any community or faith. It is only on the advisory panel recommendation that certification is issued.

5. We may refer to the scheme of the said Act more specifically Part-II which deals with Certification of Films for Public Exhibition. Under Section 3, a Board of Film Certification is constituted which shall consist of Chairman and not less than twelve and not more than twenty-five other members appointed by the Central Government. Any film for exhibition requires an application to be made to the Board under Section 4 of the said Act. The advisory panel for enabling the Board to efficiently discharge its functions is constituted under Section 5 with regional centres. The different kinds of certificates are granted under Section 5(A) and Section 5(B) prescribes principles for guidance in certifying films. Any person applying for certificate in respect of film who is aggrieved by any order of the Board can prefer an appeal by Section 5(C) of that Act before an appellate

Tribunal which is constituted under Section 5(D) of the Act.

6. The Central Government also has a power for suspension and revocation of certificate under Section 5(E), but only restricted to the situation enumerated under the said Section.

7. Section 6 of the said Act gives revisional power of the Central Government.

8. The petitioner in the present case, has filed a petition for revocation of Certificate. On our query as to why the revision petition was not filed for proper adjudication, the only answer given is that it is not mandatory to follow the provisions of the said Act.

9. We are unable to accept the contention of the learned counsel for the petitioner. As noticed above, the present case raised an issue of balancing of the two rights--of the transgenders to be represented with dignity and the freedom and right of making films with an element of dramatisation. These two competing rights are best examined by the specialised body in terms of the objection raised by the petitioner. We have also noticed that the allegations are general in character and no details have been given, as in the case of Ms. A. Arulmozhi Case cited supra. Not only that, much water has flown since that Judgment, where different courts and the Hon'ble Supreme Court have expressed themselves in favour of the expert body examining such matters rather than licence to every individual asking courts in different parts of the country to keep interfering with the release of films by recall of the certification of the Board. In Prakash Jha Productions and Another Vs. Union of India (UOI) and Others, (2011) 10 JT 102 : (2011) 9 SCALE 265 : (2011) 8 SCC 372 : (2011) 10 SCR 496 , the Hon'ble Supreme Court observed that once the Examining Committee of the Board has seen the film along with experts and granted the certificate, the power to override the same is not vested with the State.

10. We may refer to two Judgments of this Court. The first is in Sony Pictures Releasing of India Ltd. Vs. The State of Tamil Nadu, Union of India (UOI) and Central Board of Film Certification, (2006) 4 CTC 193 : (2006) 3 LW 728 : (2006) 3 MLJ 289 , where the learned Single Judge opined that once an expert body has considered the impact of the film on public and has cleared the film, it is no excuse to say that there may be a law and order situation. A different view of a small section of society cannot be expressed by unlawful means when the authority concerned has taken a view. The second is in V. Ramesh Vs. The Director General of Police , where it was observed that a film certified as per Section 5-A of the Act is deemed to be one which is not against the interest of sovereignty of a country, public order, decency etc., and the learned Single Judge has condemned the fashion to oppose any movie, imagining that movie was opposed to any caste, religion or race. Such opposition only proves intolerance to criticism and once the Censor Board cleared the movie, there could not be any other scrutiny by any person, otherwise it would amount to "Super Censor Board" which is extra constitutional.

11. We are thus of the view that the petitioner must avail the appropriate remedy of filing revision petition under Section 6 of the said Act and we hope and trust on such a petition being filed, the proceedings will culminate expeditiously as to see that these competing rights are decided and in case there is any offensive material, the transgenders do not suffer unnecessarily. The writ petition accordingly stands disposed of. No costs. Consequently M.P. No. 1 of 2015 is closed.