

(1989) 09 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5740 of 1988

B.K. Adarsh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Cinematograph (Amendment) Act, 1974 — Section 6
Cinematograph (Amendment) Act, 1981 — Section 20, 3
Cinematograph Act, 1952 — Section 3, 3A, 3B, 3C, 3D
Cinematograph Certification Rules, 1983 — Rule 2, 22, 23, 24, 24(1)
Constitution of India, 1950 — Article 14, 19(1), 19(2), 226
Penal Code, 1860 (IPC) — Section 292

Citation : AIR 1990 AP 100

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : B. Subhashan Reddy, for the Appellant; K. Jagannadha Rao for Central Government, for the Respondent

Judgement

1. The Petitioner had produced a film titled "SEX VGYAN" (Sex Education) and applied on Sept., 18, 1987 to the Addl. Regional Officer, Central Board of Film Certification, at Hyderabad (4th respondent) for certification under S. 5-A of the Cinematograph Act (Act 37 of 1952) for short, "the Principal Act". The Examining Committee met on Oct., 28, 1987 and on preview, recommended to grant "A" Certificate to the film with 13 cuts. On its placement before the Chairman on consideration of the material, he exercised suo motu power and referred to the Revising Committee which saw the film at Bombay on November 18, 1987. All the eight members unanimously recommended that the film in its present form be refused certification and on appeal, the Film Certification Appellate Tribunal confirmed it after seeing the film on February 5, 1988 and hearing the Counsel. The petitioner is assailing the legality of refusal to grant "A" Certificate (fit for exhibiting the film to the Adults).

2. The film starts with a Conference of Medicos and other delegates on sex

education headed by Dr. Ravi Varma who prefaced with the need to enlighten the public on sex education in the modern society and the evil effects due to its ignorance followed by a discussion on several topics starting with "Happy married life", prostitution, venereal diseases. Aids, pregnancy, different methods of deliveries, family planning methods, test tube baby, sex transmission, cancer to sex organs, etc. Thereafter, there is the session viz. questions by the delegates and answers by a panel of Doctors and lastly with sex perversion and their evil effects.

3. The Revising Committee found that the title viz. "Sex Education" itself shows that the exhibiting visuals of male and female genitals, needlessly for a long time and some of them are very repulsive and nauseating. The scene relating to sale of girls for prostitution, perverted and sadistic sex behaviours of men are obnoxious and objectionable. The film showing visuals and of operative procedures are not palatable to general public etc. It concluded that-- "the overall impact of the film is such that it will hurt the sensibilities of the viewers besides misguiding them on various sex matters....". The Appellate Tribunal found that there is no prohibition, to produce a film on sex education. But however, there is no free licence. The Tribunal has to keep on forefront before ordering or refusing certification "the standard of an ordinary person in the street, of course, keeping in mind the guidelines laid down by law". There may not be any objection to show the visuals of male and female genitals as a flash once or twice to bring home the evils of venereal diseases to the audience, but exhibiting again and again offends human sensibilities. When films on V. D. or Cancer or Leprosy are shown they do contain visuals of persons suffering from, them, but repetitive or prolonged sequences of such visuals do offend human sensibilities. The theme of sale of girls successively at an auction to different persons dealing in flesh and their sequences is unnecessary. The film has given emphasis on portrayal of perverted sexual behaviour though condemns it without any glorification thereof. The sequence of prolonged perverted behaviour of a husband burning various parts of his wife with cigarette is beset with vulgarity and disgusting and portrays the depraved behaviour of the husband and offends human sensibilities. The perverted behaviour which deserves condemnation is not given emphasis in the conference of the Doctors. The volte-face by the police on her complaint in this regard is unjustified. Seeing the picture on vasectomy and tube-ctomy, it will have its adverse effects on the family planning programme. The use of breast pumping is not freedom from controversy and omission is desirable. The theme of sale of girls for prostitution shows woman as servile to man which offends guideline 2 (iv). In the sequence on Aids, homo-sexual scene is an offence because of its depravity. The agony of the Aids patient dying in the hospital is unnecessarily protracted. In the family planning sequence, there are visuals of female genitals; visuals of cleaning of vagina, visuals of genitals while putting on a condom, loop insertion Chapter I, Vasectomy, tubectomy, abortion, M.T.P. criminal abortion etc. The details of procedure regarding family planning methods need not be shown. All these are offensive to human sensibilities. In the Chapter

on Test tube baby, there are visuals of a man collecting semen in a test tube. The visuals of genitals in the sex change operations etc., the poses of sexual intercourse are shown from a book. In the Chapter on perversion, the entire episode of perversion and sadism of male torturing his wife till her body is shown on the beach is offensive to human sensibilities by its depravity and it places the cruelty of the man shown exceeds limits. It is not necessary to show the operation removing a cut portion of a cucumber from the vagina of a girl. All these visuals are offensive to human sensibilities, offending guidelines 2 (iii), 2 (iv) and 2 (iva) read with guidelines 1 (a) and 3(i) of the guidelines issued by the Government for certification of films. It is concluded thus:

"Any amount of cuts will not salvage the film without mutilating it. The film under appeal in its present form is, therefore, not fit for exhibition to general public".

Accordingly the decision of the Revising Committee was upheld by order dated February 23, 1988.

4. Chapter II of the Principal Act is its livewire. Sec. 3 empowers the Central Govt. to constitute a Board of Film Censors to sanction films for public exhibition. Sec. 4 enjoins any person desiring to exhibit any film to make an application in the prescribed manner for a certificate. Section 5 empowers to establish Advisory Panels to enable the Board to efficiently "discharge its functions under the Act. Section 5-A gives powers to the Board to grant certification after examining the film in the manner provided in the Act that it is suitable for unrestricted public exhibition or restricted to adults (A) Certificate etc. Section 5-B provides principles for guidance in certifying films. Section 5-C gives right of appeal against the order of refusal by the Board. The Principal Act was amended under the Cinematograph Amendment Act, 1974 (Act 27 of 1974), for short, "the second Amendment Act", which came into force w.e.f. August 23, 1974. After Sec. 3, Sections 3A to 3D were introduced empowering to appoint Assessors and Regional Officers to enable the Board to efficiently discharge its functions for the purpose of examination of films in different languages. Section 3-B empowers the Board to constitute Examining Committees and Revising Committees. Section 5 amends Section 4 and also introduces Sec. 4(1 A). u/s 4(1) an application for certification has to be made in the prescribed manner. Section 6 of the second Amendment Act inserts Section 4A after Sec. 4 of the Principal Act. Section 7 substitutes a new section for Section 5 of the Principal Act. Section 8 amends S. 5-A. S. 9 amends S. 5-B. After making an application under S. 4(1) for certification, the Examining Committee under S. 4A(1) is empowered to examine the film. Under S.4-A(2) the Examining Committee shall examine the film having regard to the principles for guidance specified in or under S. 5-B and make such recommendations to the Board as it deems appropriate and communicate its recommendations u/s. 4(3) in the prescribed manner to the Board. The Board "shall" after making such further examination of the film pass such orders on the application as it deems fit. Subsection (4) thereof provides that before passing such orders the Board shall refer the film for further examination to the Revising

Committee-(a) in a case where there is a difference of opinion between the Chairman of the Examining Committee and the recommendations, and (b) in any other case, if the applicant represents that the film shall be so referred.

5. The Principal Act was further amended by the Cinematograph (Amendment) Act, 1981 (Act 49 of 1981) for short, "the third Amendment Act", which came into force w.e.f. December 18, 1981. S.3 of the 3rd Amendment Act amends S. 3 of the Principal Act. In sub-section (1) thereof, (a) for the words "Board of Film Censors", the words "Board of Film Certification" was substituted etc. The strength of the Board was increased under clause (b) of sub-section (1) of S. 3. To Section 4(1) of the Principal Act, S. 4 of the 3rd Amendment Act introduces proviso to sub-section (1)(i) and other amendments, the details thereof are not material, Section 5 of the 3rd Amendment Act postulates amendment to S. 5-A which reads thus:

"In Section 5-A of the Principal Act, for sub-section (1) the following sub-section shall be substituted viz. (1) if, after examining a film or having it examined in the prescribed manner, the Board considers that-

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (i) of sub-section (1) of S. 4 it shall grant to the person applying- for a certificate in respect of the film a "U" certificate or as the case may be, a "UA" certificate, or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate, or as the case may be, a "S" certificate; and cause the film to be so marked in the prescribed manner.

Provided that the applicant for the certificate, any distributor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b)."

Section 6 amends S, 5-B. Section 7 substitutes new section for Section 5-C with sub-sections (1) and (2) thereof and S. 8 inserts new sections -- Sections 5D to 5F. The details thereof or the other amendments are not relevant for the purpose of this case, except S. 20 which reads:

"The Cinematograph (Amendment) Act, 1974 is hereby repealed".

The principal Act was amended by the Cinematograph (Amendment) Act, 1984 (Act 56 of 1984) for short, "the 4th Amendment Act" merely omitting Section 6-B and introducing amendment to Section 7 of the Principal Act.

6. The contention of Sri Subhashan Reddy, learned counsel for the petitioner is

that the 3rd Amendment Act 49 of 1981 merely amends Sections 3, 4, 5A and 5B and no amendments to Sees. 3 A, 3B and 4A under the 2nd Amendment Act 27 of 1974 were made. u/s 4A, the Chairman is devoid of power to make a reference to the Revising Committee. The Board alone has power to refer it to the Revising Committee, that too when there is a difference of opinion between the Chairman and the other members or on an application by the person applying for certification. Thereby, the reference by the Chairman to the Revising Committee against the unanimous decision of the Examining Committee is without jurisdiction and ultra vires of his power. I find no force in the contention. It is undoubtedly true that if S.4A remains on the statute, the contention of the Counsel is unassailable. But by operation of S. 20 of the 3rd Amendment Act, the entire 2nd Amendment Act was excised from the statute and its operation thereof is obliterated. Wherever there is an insertion by way of substitution to the Principal Act it was accordingly done. In exercise of the power u/s. 8 of the Principal Act and in supersession of the Cinematograph Censorship Rules 1958, the Central Govt. made Cinematograph (Certification) Rules 1983, for. short, "the Rules". Rule 2 (Hi) defines "Examining officer". "Advisory Panel is defined under Rule 2(ii). Under Rule 7, Advisory Panels are constituted. Rule 21 prescribes procedure for making application for certification of films and the procedure to be followed thereon. Rule 22 provides procedure for appointment of the Examining Committee. Under sub-rule (8), the Examining Committee shall examine the film having regard to the principles for guidance in certifying films specified in S.5-B (1) and the guidelines issued by the Oovt. u/s. 5-B(2), the details of which would be dealt with later. Under sub-rule (9) the Examining Committee, immediately after examination of the film, record reasons and state whether he/she considers the film suitable for (a) unrestricted public exhibition i.e. for "U" certificate or (b) suitable restriction for unrestricted public exhibition with an endorsement of caution as to whether any child below the age of 12 may be allowed to see the film at the option of the parents or guardians i.e. that it is fit for "UA" Certificate, (c) that the film is suitable for public exhibition restricted to adults i.e. fit for "A" Certificate or (d) is suitable for public exhibition restricted to members of any profession or any class of persons having regard to the nature, content and theme of the film, i.e. fit for "S" Certificate, (a) the film is suitable for "U" or "UA" or "A" or "S" certificate as the case may be if a specified portion or portions be excised or modified therefrom; or (f) that the film is not suitable for unrestricted or restricted public exhibition i.e. that the film be refused a certificate. Under sub-rule (11) the Examining Officer defined under Rule 2(viii) is to see that the recommendation by each member is properly made. Under sub-rule (12) the Examining Officer shall within three working days send the recommendations of all the members of the Examining Committee to the Chairman and where the Chairman is away from the centre where the film is examined by Regd. Post. Under sub-rule (13), it shall be the personal responsibility of the examining officer to examine whether each and every guideline issued by the Govt. has been followed and to bring any lapse or deviation to the notice of the Chairman. On receipt of the record referred to

under Rule 22. by sub-rule (1) of R. 24, the Chairman may, of his own motion or on the request of the applicant refer it to a Revision Committee constituted for the purpose. Then procedure regarding constitution of the Revising Committee, their recommendation etc. are made, the details are not material to adumbrate. Thus it is clear that after the 3rd Amendment Act was made, Rules have also been framed and Rule 22 and Rule 24 provide power to the authority to constitute examining and revising committees respectively and of their power. The duties of the Examining Officer and of the Chairman as well are also stated. After the Examining Committee makes a recommendation either unanimously or with separate opinions, the matter thereafter has to be placed before the Chairman by the Regional Officer. Before placing it, it shall be the duty of the Regional Officer to examine whether all the guidelines issued u/s. 5-B (2) or 5B(1) have been strictly adhered to. The Chairman is empowered either suo moto or on application made in this behalf to refer the matter to the Revising Committee constituted for the purpose which again shall perform the same functions like the Examining Committee.

7. It is already seen that by operation of S. 20 of the 3rd Amendment Act, S. 4-A is completely repealed obliterating its operation. In its place, Rules 22 and 24 occupied the field. Undoubtedly there is no provision in the 3rd Amendment Act to constitute Examining and Revising Committees. But the Principal Act gives power to the Central Govt. u/s. 8 to make rules to subserve the purpose of the Act. In exercise thereof the Rules have been made. Rules 22 and 24 do contain the procedure for constitution of Examining and Revising Committees. One important factor to be taken note of under the 2nd Amendment Act is that it merely induced only saving clauses and there is no repeal of any provisions of the Principal Act. If the contention of Sri Subhashan Reddy is given acceptance, there is a dichotomy in the constitution of the Committees one u/s. 4A introduced through the 2nd Amendment Act, and the other under Rules 22 and 24. Wherever it is intended, the 3rd Amendment Act clearly mentions substitution and amendment to the Principal Act but not to the 2nd Amendment Act.

8-9 It is true, as contended by Sri Subhashan Reddy and in Ramesh Dalal Vs. Union of India (UOI) and Others, popularly known as "Tamas T. V. Serial" in the narrative of the scheme of the Act, the S. C. in Paragraph 9 has copiously referred to Ss. 3, 4, 4A, 5, 5A and 5B (as if Sec. 4A being on statute). It is rather unfortunate that the repeal of S. 4A by the 3rd Amendment Act was not brought to the notice of the Supreme Court. But mere reference therein has little effect since the decision rendered does not rest on the provisions of S. 4A. When the 3rd Amendment Act had expressly repealed the operation of Section 4-A mere reference in the Judgment of the repealed provision does not have the effect of resurrection of its obliteration from the statute and given effect to a repealed section.

10. A Full Bench of this Court in Allied Exports and Imports, Gudur Nellore

District Vs. State of Andhra Pradesh, Hyderabad, considering the terminology of repeals and amendments, held that legislature labels the enactments as repeal or amendments, a provision is withdrawn from the Section particularly when a provision is added to replace the one withdrawn. It would be called repeal. When the entire Act or Section is abrogated and no new Section is added to replace, legislature labels it as repeal. It is however recognised that any attempt to make distinction between repeal and amendment is futile. The amendment Act has the same qualitative effect as a repeal. This repeal and amendment are not mutually exclusive terms. They both are frequently applied to the same Act.

11. In Statutory construction by Sutherland (Vol. I) in para 1926 at page 399, it is stated that the repealed statute may be revised by express enactment or by implication. Cases involving express revival of repealed statutes are not numerous, undoubtedly because such statutes are uncommon. Revival by operation of law, or implied revival, such as the repeal of a repealing or amendatory Act is more common. In paragraph 2035 at p. 513, it is stated that the re-enactment of a statute which has been repealed by specific provision, or by implication from later legislation upon the subject matter invalidates the previous repeal and restores the statute to effective operation. Likewise, where a statute has been amended and changed by a later enactment, the reaffirmation of the statute in its original "form operates to repeal any inconsistent amendments and modifications which have been engrafted upon the statute since its original enactment. In para 2039, at p. 519, it is stated that "Under the common law rules of interpretation, the repeal of a repealing statute operates to revive the original enactment where the repeal of the repealing statute is accomplished by express provision without addl. legislation upon the subject matter".

In Craies on Statute Law, 7th Edition, at p. 355 under the Chapter "Construction of repeal Clauses", it is stated that the effect has to be understood by examining the scheme of the drafting the legislature has adopted. In Maxwell Interpretation of Statutes 12th Edition, it is stated at p. 19, that where an Act is repealed and the repealing enactment is then repealed by another which manifests no intention that the original Act shall continue repealed, the common law rule was that the repeal of the second Act revived the first ab initio.

12. In Jethanand Betab Vs. The State of Delhi (Now Delhi Administration), relied on by Sri B. Subhashan Reddy, their Lordships of the Supreme Court approved Khuda Bux Vs. Manager, Caledonian Press, of the statement of law by Chakravarthi, C. J. that the purpose and scope of amendment or repeal is intended only to excise dead matter from the statute book and to reduce its volume. Mostly they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. In order to lighten the burden of ever increasing spate of legislation and to remove confusion from public mind, "the object of the Repealing and Amending Act of 1952 was only to expurgate the

Amending Act of 1949 along with similar Acts, which had served its purpose". Farfrom helping the petitioner, the ratio is consistent with the view I am taking. Thus, it is the settled law that the object of the 3rd Amendment Act has to be gleaned from the purpose it seeks to serve and to find whether there are any inconsistencies. The 3rd Amendment Act excised the surplusage brought on statute under the 2nd Amendment Act and expurgated it from the statute by express repeal incorporating wherever it is necessary by substitution or amendments to the Principal Act. Section 20, therefore, expressly repealed the entire 2nd Amendmet Act so that there exists no confusion in the operation of the Principal Act and of the amendments brought on statute from time to time under various Amendment Acts.

13. Through S. 20 of the 3rd Amendment Act, the legislature manifested its clear intention that S. 4 A is obliterated and any simmering clouds of doubt cast around its operation is cleared. Thus, I have little hesitation to hold that S. 4 A no longer exists on statute; thereby the need for reference by the Board to the Revising Committee is non-existent; the Chairman after the matter having been placed before him by the Regional Officer alone is competent to go into the record and as the record discloses that he had in fact gone into the matter. He is empowered to make suo motu reference to the Revising Committee and did in fact make reference to the Revising Committee. Thus, the action taken by the Chairman is clearly within his power and jurisdiction.

14. The further contention, relying upon the averment in the counter-affidavit that the Chairman did not apply his mind and it was referred to the Revising Committee in a routine manner is also devoid of substance. The record does disclose that the Chairman has exercised his discretion. Rule 24 places no fetters in exercise of his suo motu power. He did apply his mind and referred the matter to the Revising Committee.

15. At this juncture, it is also relevant to mention that in the affidavit and in the prayer though it is pleaded that Rule 24 is ultra vires of the power, across the Bar at the hearing, this contention was not pressed for consideration. The contention of the respondents that the petitioner has subsequently filed W. P. No. 577/89 in Bombay High Court with an averment that he would withdraw this W. P. and thereby this Court cannot hear the W.P., is also devoid of any force. There is no express prohibition to invoke the jurisdiction of this Court as the film was produced here and the Examining Committee saw it and recommended here or of the Bombay High Court where the Revising Committee had seen it. True, that a party may not be-entitled to simultaneously prosecute for the same relief in different High Courts. But it is always one of choice to the party and it is open to the party to withdraw the W.P. pending in either Court. But on that ground alone, unless it is established that it is an abuse of the process of Court the writ petition cannot be thrown out. No circumstances have been brought to my notice that it is in abuse of process of Court. Mere omission to withdraw as undertaken in the W.P. filed in the Bombay High Court also does not preclude this Court to go

into the merits. What is the effect of the decision of this Court on the pending proceedings in the Bombay High Court is altogether a different matter with which we are not presently concerned.

16. The contention of Sri Subhashan Reddy that the Chairman having referred the matter suo motu to the Revising Committee has participated in the proceedings of the Revising Committee and therefore the order is vitiated by violation of the Principles of natural justice that no man can be a judge of his own cause, is also devoid of substance. From the record it is clear that the Chairman had not participated in the proceedings of the Revising Committee.

17. The contention of the Central Govt. that the Revising Committee and the Tribunal are expert bodies, they having found that the picture as a whole is not fit to be certified for exhibition is founded on the opinion by the Expert bodies and this Court cannot interfere in exercise of the power under Art. 226 of the Constitution, is not valid in law. The very object of judicial review under Art. 226 of the Constitution would be knocked off its bottom if this wide proposition is given efficacy or acceded to. As held in Case Ramesh Dalal Vs. Union of India (UOI) and Others, , the Court would be slow to disturb the findings recorded by the authorities or Tribunals under the Act. That does not mean that the Court is precluded to go into the questions raised by the parties in controversy and decision reiv- dered.

18. On the anvil of Art. 14, an argument to accord immunity from punishment, penalty or liability for contravention of law on par with those escaped unscathed is often being breezed across the Bar and it received repeated echo from Sri Subhashan Reddy. He contends that similar films in regional languages like Malayalam, Tamil, Telugu, etc. with more obscenity and pornography have been certified by the Board for exhibition and the denial of certification to the petitioner offends Art. 14. I find no inkling of doubt to reject the contention outright. Undoubtedly the Constitution assures to every citizen right to avocation, profession, trade, business as well as equality before law. It is equally paramount that every one has a fundamental duty to obey the law, in other words, not to contravene or violate the law or commit an offence. He who abides by law alone is entitled to equal protection and the converse leads to grotesque results. Law affords no immunity to any person to contravene law and claim that he would be equally permitted to be escaped from punishment, liability or penalty for violation thereof merely because others happened to go scot free. Merely because the other films with more or equal obscenity and pornography have been certified for exhibition, it does not automatically entitle the producer of a film for certification ti/s. 5A for "exhibition. In Reg. v. Reiter (1954) 2 QB 16 it was held that it is no good defence to say that there are other portions in other books or articles which contain obscene matters as serious as or more serious than the offending article. Equally in In Re: D. Pandurangan and Another, it was also held that whether a particular book is obscene (or not) is a question of fact and mere fact that there is no prosecution of publishers of similar books cannot

mean that the instant book does not fall within the scope of Sec. 292 IPC. Thus, I hold that the mere grant of certification to other films which have more or similar obscene or pornographic scenes or events or sequences does not automatically entitle a producer like petitioner of a motion picture to a certification u/s. 5 A. It is the particular film that needs certification alone has to be viewed and if it is found to be in conformity with law then alone it is entitled to a certification u/s. 5A. The petitioner is not entitled to avail the protection of Art. 14 on this ground if it is found to have violated the law. The art of the matter centres round the question whether the film in question is produced in accordance with the principles and guidelines issued u/s. 5B? and whether non-issue of certificate offends his right to freedom of expression? Undoubtedly, the script writer or a producer has fundamental right under Art. 19(1)(a) of expression through producing motion picture for exhibition to the general public conveying his/her ideas or propagating his/her views on any topic of importance. It is also equally important that widest scope for freedom of thought and expression is to be given to the adventurous and imaginative exercise of human mind and boldness of expression is indispensable for a progressive society. The basis of human progress, has always been dependant on human thought with keen insight. Even accidental factors would also contribute to the progress of the society but to the extent only of generating in the enquiring mind of his desires to project for good of the society or to solve the ills pervading in the society and the need for solution are to be encouraged. Freedom of thought is an integral part and in order to be of use to man must have its complementary freedom of speech and expression and they should not be misled. Otherwise the stream of thought will either stagnate or will try to overreach the imposition by revolutionary activities. Neither regimentation of thought and expression nor its necessary outcome viz., violent outburst is conducive to social interest or progress in the society under rule of law. When Art. 19(1)(a) of the Constitution guarantees to every citizen right to free expression, it is with an intention to afford every citizen an opportunity to strive towards excellence in his individual and collective activity constantly to rise to higher levels of endeavouring and achievements or to expurgate the evils prevalent in the society or to propagate among the people progressive thought or the ideas which he believes to be conducive to orderly progress of the society. However, it would be subject to reasonable restrictions laid in Cl. (2) of Art. 19 viz, public order, decency, or morality etc. The State has a right through operation of law existing or to be made preventing incitement to an offence or impose reasonable restrictions on the freedom under Art. 19(1)(a) to subserve the public order, decency or morality, etc. Section 292, IPC is a step in that regard and punishes obscenity. Ideas having redeeming social importance are allowed to be conveyed; yet obscence, lewd or lascivious are no essential part of any expression of ideas and have no little social values as a step to truth or progress or order in society. The words obscence, lewd and lasciviousness signify that form of immorality which has a relation to sexual impurity and has a tendency to excite lustful thoughts. Sex and obscenity are not synonymous. Obscene material is material which deals

with sex in a manner appealing to prurient interest. The portrayal of sex either in the art, literature or scientific works or through motion pictures is not itself sufficient reason to deny material the protection of freedom of expression assured under Art. 19(1)(a). Sex has a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages. It is one of the vital problems of human interest and public concern. Obscenity means the material must have a substantial tendency to deprave or corrupt its readers or cinagoers by lascivious or sexual thoughts or arousing lustful desire i.e. thoughts induced by the material will affect character and action. The words "Deprave" and "Corrupt" refer to the effect of pornographic articles or motion pictures on the mind inculcating or exciting motions and it is not essential that any physical activity or (if that phrase has a different meaning) any overt sexual activity is necessary. Indecent or obscene convey one idea viz. offending against the recognised standards of propriety prevailing in the society of the day; indecent being at the lower end of the scale and obscene at the upper end of the scale. The State as a patria parentis or as a guardian and promotor of general welfare has a social interest or community interest to interdict motion picture which transgresses the bounds of decency and reaches obscenity to exhibit pornography or obscene film for exploitation of sex for a base purpose or commercial motivation. Cinema or a motion picture is a powerful media of expression. No one has an unbridled fundamental right to free expression to cater to the lowest common detriment of debase or pornographic scenes undermining the social fabric to degenerate cultural values or social interest. Exhibition of a motion picture with lewd, lascivious pornographic sceneries or scenic effects is not a free licence to a producer of a motion picture with a view to exhibit dirt for money's sake in the felicitous language of Frankfurter, J. or to exploit people's weaknesses as a commercial venture to make money portraying or propagating shoddy and vulgar taste. The reason is obvious. The motion picture instantly appeals to visual and aural senses. The people of all groups with varied standards of education and cultural levels, values, moorings and perceptions see the film exhibited. All may not view the film with the same objective or disinterested manner. Persons prone to vulgarity may be instantly effected with lasciviousness lewdness or by nudity with lustful thoughts and may tend to be depraved or corrupted to similar sexual acts or attempt to commit rape, etc. Its versatility and pervasiveness is deep. The motion pictures intions more deeply than any other form of art; its effect particularly on children and adolescents is more deep since their immaturity makes them more willingly suspend their disbelief than mature adults. The young and adolescent try to emulate or imitate what they have seen. Society is interested in seeing that individual freedom with regard to thought and expression is not curbed so as to erect impediments on the path of progress and create intellectual inertia in the very minds from which it can gainfully benefit; it is equally interested in seeing that the young and the impressionable are guarded against subtle machinations of pseudo artists and writers. The essence of the problem is that the law of obscenity while interfering the least with the

freedom of expression and investigation, must protect society and particularly young and adolescent from the harmful consequences of the anti-social and commercial activities of the peddlers of pornographic material which is devoid of any artistic, literary or scientific intention or purpose. The main object of law must be not to censor literature but to suppress pornography.

19. In *Raj Kapoor Vs. Laxman*, Krishna Iyer J., speaking for the Court held that the cinema is a great instrument for public good if geared to social ends and can be public curse if directed to anti-social objectives. But all freedom is a promise, not a menace and, therefore, is subject to socially necessary restraints permitted by the Constitution. Having regard to the instant appeal of the motion picture, its versatility, realism, and its co-ordination of the visual and aural senses, what with the art of the cameraman with trick photography, vistavision and three dimensional representation, the celluloid art has greater capabilities of stirring up emotions and making powerful mental impact so much so the treatment of this form of art on a different footing with pre-censorship may well be regarded as a valid classification. In *Shri Chandrakant Kalyandas Kakodkar Vs. The State of Maharashtra and Others*, it was held that the concept of obscenity would differ from country to country depending on the standards of morals of contemporary society. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. The standards of contemporary society in India are also fast changing. The adults and adolescent's have available to them a large number of classics, novels, stories and pieces of literature which have a content of sex, love and romance. In the field of art and cinema also the adolescent is shown situations which even a quarter of century ago would be considered derogatory to public morality, but having regard to changed conditions are more taken for granted without in any way tending to debase or debauch the mind. What the Court has to see is whether a class, not an isolated class into whose hands the book, article or story falls suffer in their moral outlook or became depraved by reading it or might have impure and lecherous thoughts aroused in their minds. In *Kingsley Corp'n. v. Regents of "University of New York* (1959) 3 Law Ed 2d 1512 dealing with *Lady Chatterley's lover* case the Supreme Court of United States of America upheld propagation of adultery not offending freedom of expression. But Art. 19(2) of our Constitution makes all the difference. After considering the development of law in England and America in *Samuel Roth v. USA* (1957) 354 US 476 in the context of validity of S. 292, IPC the Supreme Court in *Ranjit D. Udeshi Vs. State of Maharashtra*, speaking through Hidayatullah J. (as he then was) held that the test laid down by Cockburn, C.J. in *Queen v. Hicklin* (1868 3 QB 360) has been uniformly applied in India. In *Kingsley Corporation case* (supra) open propagation of adultery by Lawrance was held to be a constitutionally protected freedom of expression in America, but in India and England the same was held to be obscene. In that context, the Constitution Bench held that the freedom of expression is subject to reasonable restriction which may be thought necessary

in the interests of general public and once such is the interest of public decency and morality. The Penal Code promotes public decency and morality. But the test of inculcating depravity and corrupt thoughts of those whose minds are open to such immoral influences and into whose hands the publication may fall or needs to be modified in considering the freedom of expression guaranteed under Article 19(1)(a). Therefore, each case has to be considered and the test to be laid down must obviously be of a general character but it must admit of just application from case to case by indicating a line of demarcation not necessarily sharp but sufficiently distinguishing between that which is obscene and that which is not. None has so far attempted a definition of "obscenity" because the meaning can be laid bare without attempting a definition by describing what must be looked for. It may however be said at once that treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. The Hicklin test need not be discarded. But each case has to be considered on its own facts. In *K.A. Abbas Vs. The Union of India (UOI) and Another*, it was held that the freedom under Art. 19(1)(a) is subject to Art. 19(2). In *Samaresh Bose and Another Vs. Amal Mitra and Another*, the appellant wrote a novel by name "Prajapati" and was published in *Sarodhya Desh* -- a Bengali annual Pooja Journal. Therein, while depicting the contemporary evils in the society described in vulgarity the scenes relating to sex. On laying the prosecution- punishable u/s. 292, IPC and conviction thereof by the trial Court and confirmation on appeal and in revision by the High Court and on further appeal, the Supreme Court laid down that unconventional words have been used emphasising on sex and description of female bodies and the narration of the feelings thoughts and actions in Vulgar language, though may appear to be vulgar and readers of cultured and refined taste may feel shocked and disgusted, yet it was held that though the author has written the novel which came to be published in *Sarodaya Desh* for all classes of readers, it cannot be right to insist that the standard should always be for the writer to see that the adolescent may not be brought into contact with sex. Though female anatomy was described at four different settings with vividness in vulgar language, it was held that if a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents, adolescents will not be in a position to read any novel and will have to read books which are purely religious. The test laid down therein was that the book as a whole and with reference to particular scenes has to be read and understood in the context. Decision of the Court emphasises the objectivity in the assessment of a book, story or an article as a whole vis-a-vis with particular reference to the offending passages in the Book, story or article. The court must take an overall view of the matter complained of as obscene in the setting of the whole work, but the matter charged as obscene must also be considered by itself and separately to find out whether it is so gross and its obscenity so pronounced that it is likely to deprave and corrupt those whose minds are open to influence of this sort and into whose hands the book is likely to fall. In that context it was held that to deprave means to make morally bad, to pervert, to debase or corrupt morally. To corrupt meant to render morally unsound or rotten, to

destroy the moral purity or chastity, to pervert or ruin a good quality to debase, to defile. No intent to deprave or corrupt was necessary.

20. Therefore ultimately it is the duty of the Judge to consider in each case whether a particular book, article or a motion picture is obscene. The offending portion or parts are also to be independently considered. In that context the tests to be laid down are the predominant theory or theme taken as a whole whether appeals to prominent interest according to the contemporary standards of the reasonable average man; whether the motion picture is not saved by any redeeming social values; whether it is patently offensive because it is opposed to contemporary standards and whether the story, incident or the dialogue likely to impair the moral standards of the public by extenuating vice or crime or depraving moral standards was it likely to give offence to reasonable minded cinema audience; what effect would it have on the minds of the general public including adolescent young children, etc. and whether it is portrayed or photographed beyond decency or morality. The decency or indecency of a particular picture, sequence or scene cannot depend upon the nature of the subject matter, but the question is one of the manner of handling with the subject matter and sociological or ethical interest or message which the film conveys to the reasonable man. The approach of the court would be from the perspective of social pathological phenomenon with a critical attitude and perform the role of a clinical doctor keeping the balance between the felt necessities of the time and social consciousness of the progress of the society eliminating the evils and propagating for the cultural evolution literary taste and pursuit of happiness in social relation, national integration and solidarity of the nation and the effect of the film thereon.

21. Life as lived by most of us is not of a permit. It is not realistic to depict that which is not conducive to comparative common standard prevailing in the society of the day. Life itself is an inter-mixture of good and evil and of light and shadow. It is impossible, nor indeed is desirable to ask a writer or a producer to be like a sage to be circumspect when depicting the evils and all go out when dealing with good. If isolated passages or scenes, their effect may by itself be dangerous or offensive, disgusting, offend human sensibility or tend to deprave or corrupt the moral standards prevailing in the society of the day, that part must be looked at in the circumstances and the need for the depiction thereof. Obscenity is to be judged on the basis of the film itself. The motive of the producer is irrelevant. The law does not consider on the ability of the producer to make the motion picture. What is its effect on the viewer of the picture, in particular, on the young and adolescent cine-goers is a relevant factor. The motion picture must serve the public good. It should not go beyond what it seeks to serve, the public, purpose whether undue exploitation of sex exists having regard to the existing standards of decency in the community is to be looked into. Sex exploitation which is shocking and disgusting though not necessarily shown to have the tendency to deprave or corrupt the persons viewing the picture be snubbed. Therefore it requires a careful examination of the quality of

the film and its internal setting; its qualitative treatment of theme, its standard of the comparative reflection on the general public; the sense of kept in view in adjudging whether the motion picture in question would stand to the test of satisfying a reasonable man in the society that it would not deprave or debase or corrupt his moral standards or induce lewdness, lasciviousness or lustful thoughts. The restriction is only toward that material which is deemed capable of tending to deprave and corrupt sexual feelings. Pre-censorship has a slow killing effect. It will not only destroy the creative activity but also creative thinking. One would eschew puritan approach but adopt realism and pragmatism. The Court would from the above perspective and angulation weigh the merits and demerits and decide whether on reasonable balance the film is proved to be justified as being for public good. The censorship is obviously to be gleaned through that angle and geared to that end. Accordingly, I hold that the freedom of expression of the petitioner is subject to law under the Act and Rules and the restrictions are reasonable saved by Art. 19(2) of the Constitution.

22. The question is whether the film "Sex Education" is obscene creating lewdness, lasciviousness or tending to deprave the lustful thoughts of the cinegoing public? With consent of both the Counsel, preview of the film was arranged on August 24, 1989. Two of the members of the Board who are not either parties to the Examining Committee or Revising Committee, viz. Sri K. Punnaiah, a noted public and literary man and Sri Vaman Rao, an administrator were present. I have also invited Dr. G. Anjanayulu, distinguished and eminent Professor in Social Science and Preventive Medicine, Osmania University who is a recipient of B. C. Roy National Award for the exemplary service in the field of social science and Preventive Medicine including Family Planning etc. He is a visiting Professor of several Universities on faculty of Preventive Medicine and Social Science not only in India but also abroad. He was also present. With the consent of both the counsel we have seen the picture. After seeing the picture when all the members including myself express our surprise as to why it was totally prohibited, the Regional Officer has stated that the petitioner had cut several portions from the picture. Thereon Sri Subhashan Reddy had enquired from the party. Though the party initially stated that there are no cuts, but on persistence by the counsel, admitted that without his knowledge, the Editor might have deleted some portions. The case was then posted for hearing on August 30, 1989, on which date the counsel has stated that the petitioner is producing the cut portions of the film. Accordingly, they arranged preview on Sept. 2, 1989, and I have seen the picture with cut portions joined in the presence of both the counsel and Sri Pothukuchi Sambasiva Rao, Senior Advocate and noted literature and famous novel writer Smt. V. Sita Devi, who are also members of the Examining Committee. The petitioner made six cuts out of (13) suggested by the Examining Committee.

23. As stated in the beginning, the picture starts with the congregation comprising of Medicos and other delegats from all over the country headed by Dr. Ravi Verma emphasises the need to educate the people of the correct

perspective on sex education so as to remove many misgivings from the minds of the general public and the people are properly guided. The first session gets concluded with the introductory remarks vis-a-vis his personal experience. The experts on various subjects introduced each subject and explained the subjects. The second session starts with married life of three scenes of the newly wedded couples the first of which starts with the ill-advice and fear psychosis created by co-woman to the bride who was about to enter the martial home of the nuptial room with all fear and her resistance to the affectionate husband to have a happy first night ended with ultimate wreck. The second scene starts with the perverted behaviour of the husband on the first night in whose bed room several nude pictures are hung ended with death of his wife. The third scene ends with mutual understanding of wife and husband and their happy first night. In that, there is a scene of showing the thighs of the lady as a prelude to suggest start of cohabitation. In this scene, the showing of thighs were suggested by the Examining Committee to be cut. The intedment of this episode appears to be to inculcate in the married couple a sense of mutual understanding and reciprocity while participating in the act of cohabitation. The suggested cut neither advances nor diminishes the effect.

24. Ramanlal Lalbhai Desai Vs. Central Board of Film Certification, Bombay and Another, , relied on by Sri B. Subhashan Reddy, concerns the feature film titled "Bed Room Story". The learned Judge upheld exhibition of nude pictures in the bed room to be not obscene or repulsive. It should be understood in the context of the taste of the man and how, on account thereof, he develops bad taste. With an obvious intention to expose that evil, the nude pictures of women have been displayed in the bed room. The same is the case in the scene relating to last scene in second session and that therefore it is neither lascivious nor depraves the viewer of the film nor tends to deprave or corrupt the moral standards of them. Thereby there is nothing offensive or obnoxious after excluding the cut-portion in the 2nd session of the picture.

25. The third session deals with the evils of prostitution and the circumstances under which girls are driven to brothel houses. The Doctor explains with anguish the pathetic situations with an exhortation to curb it. The sale of a girl in succession starting from the father to the ultimate brothel house is only a painful social evil prevalent in the society and. we read regularly with distress of similar news in papers. There is nothing repulsive to social sensibility in that regard. The entire episode has to be understood in the background of the prevailing social evils leading to prostitution. Neither the script writer nor the producer glorifies the prostitution. On the other hand, it intends to condemn the institution of prostitution and its evil effects followed and shown in the third session relating to Veneral diseases. Thereby I find nothing repulsive in the protrayal of scenes relating to prostitution. In K.A. Abbas Vs. The Union of India (UOI) and Another, , the Supreme Court upheld the film protraying the flesh trade. In fact it would serve the constitutional goal set down in Art. 23 of the Constitution.

26. Regarding the scenes on Venereal diseases in the fourth session, the showing of the genitals of female and male is to be understood in the context of showing the pathetic life of the persons habituated to debaucher-ous life afflicted with abominable Venereal Diseases which corrodes not only the health of the individual but the social hygiene. In that context, exhibition of visuals have their desired effect. It creates a horror in the minds of the persons who have proclivity to have extra marital life. They may utmost be said to be repulsive to the viewers but certainly they do not deprave or corrupt the moral standards of the viewers. Thereby I find no obscenity in the picturisation of the fourth session. I agree with the Examining Committee that visualisation of homo-sexual act is redundant and it does not convey either any message or intend to inculcate a sense of message of its effects on the viewer. Therefore, the suggestion thereof by the Screening Committee to delete it is perfectly warranted and to that extent it has to be cut.

27. With regard to evil effect of Aids also, it is more educative than creating any lustful thoughts on the cinegoing public. Even with regard to pregnancy and the Family Planning, the cut portions which were added and shown on the second occasion on Sept. 2, 1989, the rest of the scenes of Family Planning is not offensive or obscene. It is seen that the private parts of both sex are shown only to the minimal where the operation is to be shown to the viewer that too after fully covered by the operation dress. That would be understood in the context of the message sought to be conveyed on the need for family planning. The operations have salutary effect on the young couple so that they could understand that there is not much to be afraid of. The exhibition of genitals of male and female in that regard are to be understood in the context of the sequences. They were shown not with an intention to create any lascivious or lustful thoughts, but to know how the operation is being carried on in a clinical theatre and that too for the purpose of understanding their implications. Thereby, it seeks to promote propagation of family planning instead of retarding. Even with regard to test-tube baby, I agree with the suggestions given by the Examining Committee for deletion thereof and the rest is neither obscene nor create any circumstances depraving or corrupting the moral standards.

28. Even with regard to the visuals of Cancer of penis, cervix, breast, etc. it is absolutely necessary to show them to the viewers and they are shown not so much with a view to expose the breast of the lady or penis of the man or cervix of a female, but it is only to show how the parts would be exposed due to cancer and how treatment could be made to cure cancer. Therefore, they also are not repulsive nor create any sense of lewdness in the minds of the cinegoers.

29. Even with regard to different types of deliveries, it is more educative than creating any horror or aversion in the mind of the women to undergo operations for deliveries. After deleting the cut-portions (which are shown on the second occasion) the rest of the scenes on deliveries are not offensive, equally of sex change.

30. With regard to the scene relating to questions and answers, the deletion of

various postures of the acts of cohabitation is perfectly justified. If those postures are shown, they create lasciviousness or lustful thoughts, in particular, on the adolescent and young and that therefore the suggestion for their deletion is perfectly justified. But with regard to the visuals of breast massage, breast pump and of penis do not appear to be either relevant or any message being conveyed in that regard. Therefore, deletion of them as suggested by the Examining Committee is perfectly warranted. Rest of this part is not offensive to human sensibility.

31. The suggestion for deletion of safe period during pregnancy does not appear to be warranted. It is wholly a meaning conveyed to the wife and husband in the marital course to keep abreast of the need and caution to behave during intercourse during that period. It seeks to serve a social purpose rather than creating any horror or lewdness in the minds of cinegoing public. With regard to the scene on perversion, it is common knowledge that the scene is nearer home to the every day happening in the society where several persons mete out cruel treatment to their wives during the course of sexual intercourse. We cannot shut out our eyes to the realities. It is more not to horrify the act of the sexual perversion but show the other side viz. the unfortunate, weak and unresisting women are exposed to and the need for sanity on the part of the husband to treat his wife as equal partner in the act of cohabitation. It is more a message to those perverted persons and the lessons to be drawn by those who have that proclivity in that regard. Therefore the deleted portion of prolongation of agony after the suggestion by the Examining Committee and the added on shown on the second occasion would serve the purpose of the suggestion given by the Examining Committee in that regard. This part does not intend to show the woman in servitude.

32. It is made clear that when the picture was seen by me in the company of Professor Dr. Anjaneyulu, Sri Punneya and Sri Vaman Rao on August 24, 1989 they have unanimously stated that the picture as shown to us is not repulsive nor it creates any lustful thought. On the other hand, it is more educative and is nearer home to the prevailing conditions in the society. Dr. Anjaneyulu has further said that it is a picture worth to be shown to all the undergraduate Medicos. I wholly agree with him and so is fit for "S" Certification. Sri. Jagannadha Rao, learned senior counsel for the Central Government also has stated that he does not find any obscenity or repulsiveness or vulgarity in the picture as shown to us on the first occasion. On the second occasion, he was absent due to sickness but his colleague was present. On an overall assessment of the picture, I am also of the considered view and I agree with the members of the Examining Committee that the picture as shown with further cut portions apart from those already cut and shown on the second occasion as suggested by the Examining Committee, is not obscene and it is neither repulsive nor create any sense of horror, lasciviousness, lewdness or lustful thought on the cinegoing public. To a pleasure-seeker it is one of disappointment; to a traveller it is disgusting and to one who seeks education it is really instructive and useful to

see.

33. The Revising Committee refused the certification on the ground that it violates Guideline 2(v) read with Guidelines 1(a) and 3(i). During the hearing, it has been given a go-bye and has not been pressed. The Appellate Tribunal refused certification on the ground that the film offends Guidelines 2(iii), 2(iv) and 2(iva) read with 1(a) and 3(i) of the Guidelines. Guideline 2(iii) reads that pointless or avoidable scenes of violence, cruelty and horror are not shown. It is already seen that it does not create any violence; it also does not show any cruelty; it is more one of the educative on the sex. It also does not create any horror if it is viewed in the context of receiving a message from the picture for adoption in the marital life by the married couple; Guideline 2(v) posits that human sensibilities are not offended by vulgarity, obscenity and depravity. It is already seen that the entire film is one of imparting sex education in a correct perspective. If it is viewed in that light the sequences and scenes that are shown the subjects that are being discussed during the sessions and in amplification thereof visuals are shown they do not appear to be either vulgar or obscene nor create any depravity in the minds of the cinegoing public. Therefore, Guideline 2(iv) also is not offended. The human sensibilities are thereby not offended. With regard to Guideline 2(iva) it states that visuals are shown that they do not appear to be either vulgar or obscene nor create any depravity in the minds of the cinegoing public. Therefore, Guideline 2(iv) also is not offended. With regard to Guideline 2(iva) it states that visuals Or words depicting women in ignoble servility to man or glorifying such servility as a praiseworthy quality in woman are not presented. In this case, in the entire picture there is no attempt to glorify the man's chauvinism or the praise of servility of the woman or their ignobility to the man in any respect. On the other hand, the lesson sought to be conveyed is that woman should be treated as equal partner with the man and the man should understand how the woman suffers by his depravity, cruelty, and perversion during the course of cohabitation with his wife. Therefore, Guideline 2(iv) also is not violated.

34. Thus considered, I hold that the Examining Committee is well justified in recommending to grant "A" Certificate to the film "Sex Vigyan" of the petitioner with cut portions already deleted and some of the portions to be cut which were suggested by the Examining Committee and upheld during the course of judgment. The petitioner shall accordingly make suitable alterations and submit the film afresh to the Examining Committee for certification in the light of the law laid down above and the Board shall accordingly grant the certificate.

35. Before parting with the case, I express my deep appreciation to Prof. Dr. Anjane-yulu for his valuable assistance rendered to this Court.

36. The writ petition is accordingly allowed, but in the circumstances without costs.

37. Petition allowed.