(1977) 05 DEL CK 0005

In the Delhi High Court

Case No : Company Petition No. 32 of 1976

B.R. Kundra and Others APPELLANT

Vs

Motion Pictures Association and Others RESPONDENT

Date of Decision : 03-05-1977

Acts Referred:

Citation : (1978) 48 CompCas 536 : (1977) 13 DLT 176

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : K.K. Mehra, Satish Chander, R.M. Lal, G.L. Rawal, V.K. Kapila and A.L. Joshi, for the Appellant;

Judgement

H.L. Anand, J.

(1) This order would dispose of C. As 720/76,736/76,737/76,103/77, 4/77 and 180/77 made in C.P. 32 of 1976.

(2) C.P. 32 of 1976, a petition, under Sections 155, 397, 398 of theCompanies Act, 1956 (for short, the Act) by a member of Motion Pictures Association, a company incorporated u/s 25 of the Act(for short, the Company), with the purported support of more than therequisite number of members, as required u/s 399 of the Act,is based inter alia, on allegations of oppression of the minority by themajority in the control of the management of the company with a view,inter alia, to perpetuate the control of the group in power in the management of the company, to conduct the affairs of the comany in a partisanmanner so as to benefit the group in control and their supporters and toprejudice the interest of the minority and to take vindictive action, including action of expulsion from membership and other adverse actions in thematter of registration of Motion Pictures and settlement of claims. Oneof the allegations is that the group in the control of the management ofthe company is running rough shod over its affairs and conducting theaffairs of the company in a manner which is contrary to the provisions ofthe Articles of Association, of the company and the

various Bye-laws,Rules and Regulations made by the company for the conduct of its business. On the basis of these allegations, and certain others, the petitionersseeks the removal of certain directors and their being debarred for folding any office under the Act, adequate representation on the ExecutiveCommittee for the minority group, free and fair election to the Executive Committee in a general meeting, to be convened for the purpose, inaccordance with the Rules and Regulations and certain other directionswith regard to the admissions and expulsion of members and registration of motion pictures by the members. The company, though registeredas such under the Act, is essentially an association set up to promoteand develop production, distribution and exhibition of motion picturesin the territory known in the film trade as the Delhi-U. P. circuit. Themembership of the company is confined to these carrying on, within thesaid territory, the business of production, distribution and exhibitionof motion pictures. By and large, the scheme of the Article of Association of the company and the various Bye-laws, Rules and Regulationsof the company is such that it is not possible for any person to carryon the aforesaid business within the said territory without being a member of the company, and without the picture being registered with thecompany. There are solutary provisions in the Articles, Bye-laws, Rulesand Regulations to regulate the conduct of business by the members,the adjudication of disputes between members inter se and there are anumber of provisions which make it impossible for a person to deal IN a picture in relation to which there is an outstanding claim by anothermember unless the claim is satisfied. Having regard to the various provisions, the non-registration of a picture by the company and the expulsion by it of any member virtually incapicitates the member to carry onthe aforesaid trade in the said territory. The relevant Rules and Regulations provide for arbitration by an arbitrator, to be nominated by thecompany from among its members.

(3) The various allegations on which the petition is grounded arevehemently denied by the company and those having the control of its management. A preliminary objection is also raised that the petitionis not maintainable inasmuch as the purported support to it by the othermembers is fictitious and the support, if any, has since been withdrawnin course of affidavits said to have been sworn by these members, which have also been filed along with the reply.

(4) By an order made by this Court (Dalip K. Kapur, J.) on 25/05/1976 in C. A. 334 of 1976 the membership of certain members,who were said to have been illegally removed was restored. The company was directed to maintain status quo and restrained fromexpelling any member except with the leave of the Court, andMr. A. L. Joshi, Advocate, was appointed as a court observer toattend the meetings of the Executive Committee of the company. By asubsequent order of 30/08/1976 the aforesaid order, which was exparte, was confirmed. Leave was, however, granted to the company toinitiate the prceedings for expulsion from membership, but the orderof expulsion is not to be implemented without the leave ofthe Court. It was further observed that the Court would consider

thequestion as to the appointment of two "additional directors" afterelections had been held and that in case such appointment was madethe continuance of the observer would be unnecessary.

(5) Pursuant to his appointment as Court observer Mr. Joshi attended a number of meetings and has submitted a number of reports settingout, what appeared to him to be the manner in which the meetingswere conducted and pointing out alleged irregularities in the conductof the affairs of the company.

(6) By C.A. 736/76 the petitioner, inter alia, seeks rolief by way ofsupersession of the Executive Committee and prays, in the alternative,for adequate representation being given to the minority group on thecommittee. By C.A. 737/76 the petitioner seeks leave to amend THE petition so as to assail the validity of some of the Articles in the Articles of Association of the company and to seek relief by way of theirdeletion. By C. A. 180/77 the petitioner seeks certain directions withregard to the terms for the registration of certain pictures, the procedurefor appointment of an arbitrator and the enforcement of the Rule withregard settlement of claims between members. By C. A. 720 of 1976the company seeks leave pursuant to the orders of the Court referredto above, to expel certain members, proceedings for whose expulsionhave since reached a decisive stage. By C.A.s 103/77 and 4/77 certainmembers of the company, who claim to be the creditors of some of themembers who have allegedly made default in the payment of dues seekpermission for the company to expel the defaulting members from themembership of the company.

(7) I have heard learned counsel for the parties at considerable lengthon the various questions that arise for consideration in these applications. While there are a number of questions, both of fact and of lawwhich are in controversy between the parties, the basic hypothesis onwhich the petitioner justifies relief is, by and large, undisputed. It isnot in dispute that the present management of the company has overthe years been in the control of the management of the company, eitherby themselves or through their associates, either because of their popularity with the majority of the members of the company, as contendedon behalf of the company, or on account of the influence they yield andthe patronage at their disposal on account of the levers of power that they have held over the years and the machinations by which they havebeen able to perpetuate their hold on the company, as claimed on behalf of the petitioner. It is also undisputed that during the last manyyears there has been discontent among a section of the membership ofthe company, although the parties are at variance as to the real strengthof the dissidents. It is also not in dispute that allegations of oppressionof the minority and of mismanagement have not been made for the firsttime in the present proceedings and this Court had occasion to considersuch allegations even earlier when certain remedial directions were madeby Rangarajan, J. in respect of the convening of a general meeting ofthe company, the appointment of observers and certain other matters.While there is considerable controversy on the question whether the petitioner has the support

of a large number of members of the company, which the petitioner claims, and as to whether the petitionerand his supporters have been subjected to any vindictive action by themanagement with a view to pressurise them into submission or to otherwise prejudicially affect their interests and to even put their membership of the company into jeopardy, prima facie, there is ground tobelieve that in the historical background of the dispute, the discontentamong a section of the membership and the rather acrimonious coursethat the conflict between the two groups has taken, the apprehensionthat the minority, which has taken cudgels against the majority, whichis said to be in the control of the management, is likely to be subjectedto vindictive action, cannot be altogether brushed aside either as unwarranted or unreasonable and in the situation that has emerged thereis a possibility that the management of the company may be conductedin a manner that may be prejudicial to the interests of the minorityand, Therefore, to that'' extent prejudicial to the interests of the company.Such a possibility would ordinarily justify protective measure by Courtin proceedings of the present nature but this is more so where themembership of the company, unlike the membership of the other companies, does not involve merely the return on capital or the right toparticipate in the management of the affairs of the company, but mayeven prejudicially affect the very right of a member to carry on thetrade within a certain territory.

(8) In the position that emerges there are certain imperatives theclaim of none of which could be ignored. In the first instance, is theneed to maintain the democratic right of the majority of the membersto manage the affairs of the company within the limits laid down bylaw and the Articles of Association and the subsidiary rules, regulations and Bye-laws of the company. In the second instance, there isthe need to protect the minority from any possible onslaught from themajority so that their vital interests are safeguarded and their right tocarry on their trade is not allowed to be put in jeopardy, except in accordance with the Articles of Association, the Rules and Regulationsand consistent with principles of justice, equity and fairplay. Thirdly,there is the imperative that this Court would moderate relief in sucha way that the company, which has been doing useful work in regulating the relations between different members of the company in relationto their trading activity, is not unnecessarily denigrated or besubjected to unnecessarily judicial interference or in any manner exposed to ridicule. Lastly, it is necessary to ensure that the necessaryprotection to the minority against any oppressive acts of the majority,should not be allowed to be misused to the detriment of the companyor its membership. The various applications may now be considered inthe context of the aforesaid hypothesis and the need to strike a rea-sonable balance between the various requirements.

(9) C.A. 737176 By this application the petitioner seeks leave to amend the petition so as to assail Articles 5, 23, 24 and 34 of the Articles of Association of the company and to pray for a modification of these Articleson the ground that the existing Articles are likely to lend themselves asinstruments of oppression in the hands of an unscrupulous management,should it be so minded and the

amendment is necessary to determine thereal question in controversy between the parties and to put an effectiveend to the affairs complained of.

(10) Leave is opposed on behalf of the company on the ground thatif leave was granted it would change the nature of the petition andwould permit the petitioner to set up an entirely new case which the petitioner is unable to do by a fresh petition because of lack of supportrequired u/s 399 of the Act. It is urged that the members,who are claimed to have given their consent to the institution of theexisting petition, have either withdrawn their support or have disownedthe .consent and that the petitioner was, Therefore, unable to file a freshpetition on the cause of action which is sought to be incorporated by the amendment. It is further urged that leave should not begranted particularly where there is a serious doubt as to whether THE petition is maintainable in view of the allegations that the consent insupport of the same was fictitious or had since been rescinded.

(11) After hearing learned counsel for the parties it appears to methat, having regard to all the circumstances, leave should be granted tothe petitioner to amend the petition. The petition is grounded on allegations of oppression of the minority at the hands of a management,said to consist of a group of persons who have virtually perpetuatedtheir hold on the management of the company and have acted and arelikely to act in a manner which would be oppressive to the minorityof the members of the company, inter alia, by expelling such membersfrom the company and taking other prejudicial acts against them witha view to jeopardise their right to carry on their trade in the aforesaidterritory. By the amendment , for which leave is sought,the petitioner seeks to supplement the aforesaid allegations byan averment that in view of the past history of the management of thecompany the impeached acts of oppression and mismanagement flownot only from the various actions or inactions of the management, eventhough these actions or inactions may be in accordance with theArticles, Bye-laws, Rules and Regulations, but also because there arccertain provisions in the Articles of Association of the company, which,in their present form, are capable of being misused by a viciousmanagement. Of the articles sought to be modified Article 5 deals withthe powers of the Executive Committee of the company and conferswide powers on the committee in relation to admission of membersand includes the power to reject an application for membership. Articles 23, 24 and 34 deal with the Executive Committee and provide for anindirect election of the office bearers by the Executive Committee,which is to be elected at the Annual General Meeting of the company.According to the petitioner the various acts of oppression of the minority and the perpetuation of its hold by a group of persons on themanagement of the company have their genesis in the provisions ofthese four articles and that if these articles are suitably amended so asto restrict the power of the Executive Committee in the matter of admission of members and provide for direct election of office bearers the oppression potential of any group in power may perhaps be considerablyreduced, if not altogether eliminated, and it

may not be possible for anygroup to perpetuate itself on the management of the company. In short,by the proposed amendment the petitioner seeks to highlight the needfor incorporating institutional safeguards in the constitution of the company itself so as to prevent, as far as possible, the recurrence of anystate of oppression in the future and the perpetuation of any group inthe control of management of the company. These averments do notappear to either constitute a fresh cause of action or be said to constitutea new case. The complaint of the petitioner in the petition is that a grouphas sought to perpetuate its hold on the management of the companyand has been oppressing the minority by various actions prejudicial tothe minority members : That certain provisions of the Articles of Association of the company are also capable of being misused as instruments of oppression and of perpetuation is not foreign to the existingpetition but is a different approach to the same problem, namely, theelimination of possibility of perpetuation and oppression. The petitionis still at preliminary stage and the amendment does not in any mannercause prejudice to the company which cannot be remedied by costs. Onthe contrary the proposed amendment would enable this Court to determine the real question in controversy between the parties with regard to the proper management of the company and avoid an unnecessary multiplicity of proceedings. Leave cannot be refused merely because the company challenges either the validity or the genuineness ofthe consent or merely because of the allegations that the members whohad supported the petition had since rescinded the consent. That is aquestion that can be determined only at the trial of the petition. Primafacic, the petition was filed with the consent of members whose particulars are set out along with the letters of consent. It is true that thecompany has enclosed with its reply large number of affidavits purportingto disown the consent or to rescind it. But it is not possible to turn downleave on that ground. If it is ultimately found that the petitioner did nothave the consent of the requisite number of members mere grant ofleave would not be able to save the petition. In view of the nature of theamendment sought to be made it was unnecessary for the petitioner tofile a fresh petition or to seek a fresh mandate from the requisite number of members. There is, however, no doubt that on account of thefailure of the petitioner to assail these Articles earlier there have beensome adjournments which would entitle the company to costs. I would.therefore, grant leave to the petitioner to amend the petition in terms ofthe application but subject to a payment of Rs. 250 as costs to thecompany.

(12) C.A. 720/76, C.A. 103/77 and C.A. 4/77 :By C.A. 720/76, C. A. 103/77 and C. A. 4/77 the companyBind certain members of it seek leave in terms of the orders made byKapur. J. on 25/05/1976 and 30/08/1976 in C.A. 334/76 to expel a number of members, who are said to have become liable to expulsion on account of default in payment of dues.

(13) Article 15 of the Articles of Association of the company, interalia, empowers the Executive Committee of the company to suspend orremove any member of the recommendation of the Special SubCommittee of the company that a

member has been guilty of conductwhich is detrimental and prejudicial to the interests of the company orits members, after the member has been given an opportunity of beingheard. Article 14(11) of the Articles lists acts or omissions which shallbe considered detrimental and prejudicial to the interests of the company within the meaning of Article 15. One of these is "(1) if amember is not paying the dues of any other member or members."These provisions were apparently inserted in the Articles with a viewto regulate the business relations between members in such a way thata member is not compelled to seek the aid of a court to recover duesfrom another member. By C.A. 334/76 made in C.P. 32/76 thecompany was sought to be restrained to expel members from the company pursuant to the power of the Executive Committee under Article 15 on account of the alleged failure of certain members to pay thedues of other members on the allegations that in the atmosphere ofhostility that prevailed in view of the group rivalries within the membership of the company the members of the company, who were thesupporters of the petitioner, and those who had given consent to thefiling of the petition, were being or were likely to be harassed by thegroup in control of the management, inter alia, by removing suchmembers even where the claim made against them were bona fide disputed by them, without giving a reasonable opportunity to the memberssought to be expelled of being heard. It was further alleged that themanagement of the company was guilty of discriminatory action in thatproceedings for the removal of members, who were supporting themanagement and the members of the various Committees of the company were not being taken even though some of them had renderedthemselves liable to such action. By an order made by Dalip K. KapurJ. on 25/05/1976 the company wa

(14) According to the company and the other applicants the members of the company, sought to be expelled, have become liable to suchaction in view of the misconduct involved in their failure to pay thedues of the members for which adequate opportunity has already beengiven to them. It is urged that if .members are not allowed to beremoved it would undermine discipline among the members of thecompany and the whole purpose in incorporating in the Articles thesalutary provisions to ensure expeditious payment of dues would befrustrated and the members would be compelled to initiate protractedproceedings to recover the dues thereby rendering the summary remedprovided by the Articles almost nugatory. It is further urged thatrefusal on the part of the defaulting members to clear the dues of theclaimants is causing considerable hardship to the members as largeamounts have become blocked on account of default. Leave to removethese members is, Therefore, sought to be justified on these grounds.

(15) On the other hand refusal of leave is sought to be justified onbehalf of the petitioners on the ground that the members sought to beremoved, by and large, belong to the minority group, who are eitherthe supporters of the petitioner or gave consent to the filing of THE petition or are their associates and supporters. It is further urged thatin a large number of cases the dues are disputed and the

members aresought to be removed on the basis of an arbitrary decision of thecommittee that the members are liable to pay, even though in casethere is a bona fide dispute proceedings for removal could not beresorted to unless the liability has first been determined in appropriateproceedings of arbitration. It is further urged that while the petitionerand their supporters, Constituting the minority group, are being harassedby proceedings for their removal on account of alleged non-paymentof the dues, the company has failed to take steps over the years toenforce the claims of members against the members of the managementof the company, their associates and supporters, which runs into atidy sum of a crore and odd because of the influence that these members wield in the management of the company- It is further urgedthat no uniform policy is pursued in the matter of granting time orInstallments for payment and the members of the minority group andtheir supporters are discriminated against in these matters. It isurged that removal of a member, unlike the removal of a member ofan ordinary company, is a matter of considerable significance becausethe removal would disentitle the member to carry on the tradewithin the specified area. It is, Therefore, urged that steps should betaken to eneure that no member is removed (a) if he bona fide disputes the debt and (b) unless he refuses to pay, even after he hasbeen allowed adequate time to liquidate the claim by reasonable Installments, consistent with a practice to be universally followed.

(16) Having regard to all the circumstances I grant leave to thecompany to expel the members, leave for whose expulsion is soughtsubject, however, to the following directions, which would regulate allcases of expulsion on account of non-payment of dues until varied :

(A)A member would not be removed unless he has beengiven 15 days clear notice by registered A.D. post requiringhim to show cause why he should not be removed. The notice would specify the particulars of the claim.(b) A member who bona fide disputes the debt would not beliable to be removed until it has been determined in appropriate proceedings that he is liable to pay the amount ofthe claim.(c) If a question arises whether a member bona fide disputesthe claim or not it shall, if so desired by the member,sought to be removed, be referred by the company toany one of the members of a panel to be consistent hereafter, whose decision shall be final and binding on thecompany and the parties concerned.(d) A member would not be removed unless :(i) he has been allowed reasonable time to clear the duesby such Installments as may be considered by the Executive Committee of the company to be reasonable andconsistent with the practice to be followed by the company in that behalf;(ii) the Executive Committee of the company has consideredthe question if any action against the member, shortof removal, would meet the requirement of the situationand decides, for the reasons to be specified, that theremoval in the circumstances is the only appropriateremedy;(e) An order of removal of a member shall not be effectiveuntil the expiry of 10 days from the date on which anintimation of the order has been conveyed to the memberin writing. Such a member would have the liberty to movethis Court for appropriate directions.(f) If any of the aforesaid requirements have already beensatisfied it shall not be necessary to take such steps again.(g) The Executive Committee of the company ''would takesteps within four weeks to initiate proceedings for theexpulsion of all such members against whom allegationshave been made that they have failed to pay the dues ofa member and take appropriate steps in accordance withthe Articles, Byelaws, Rules and Regulations of the company but subject to the aforesaid directions.

(17) These applications are disposed of in these terms. C.A. 736/76. By C.A. 736/76 the petitioners pray for the supersession of theExecutive Committee or in the alternative suitable representation for the minority group on the Committee. The application is, by andlarge, grounded on the allegations on which the main petition is basedid the relief is sought to be justified with reference to the discontentamongst the minority group and the apprehension that by various decisions prejudicial to the interests of the members of the minority groupthey would be victimised, inter alia, with a view to frustrate the objectof the present petition. The application is opposed.

(18) The question as to the propriety of appointing additional "directors" so as to give representation to the minority group was consideredby Balik K. Kapur J. on an earlier occasion while dealing with C.A. 334of 1976. By an order made on 30-8-1976 certain directions were madewith regard to the Annual General Meeting. In the course of that orderthe decision of the question as to whether the two additional ''''directors"should be appointed was held over till the elections had been heldat the Annual General Meeting of the company. It was further observedthat the holding of the Annual General Meeting and the election ofthe new Executive Committee would not prejudice the Court''s powerto supersede the "Board", if necessary.

(19) The Annual General Meeting has since been held on 29/09/1976 and the members of the existing Executive Committee were,by and large, re-elected. While there is no ground to suspend theExecutive Committee, it is necessary to give adequate representationto the minority group, represented by the petitioners and their supporters, particularly having regard to the rather sweeping powers thatarc conferred on the Executive Committee, the improper exercise ofwhich can have far reaching consequences for the members in thematter of their right to carry on trade, the registration of a picture,recovery of their dues, and arbitration.

(20) The only question that requires consideration is as to themanner in which representation should be given to the minority groupon the Executive Committee. It was generally agreed that it will befutile to appoint any person as an "additional Director" who was neithera member of the company nor otherwise concerned with the trade.Even Mr. A. L. Joshi, who was appointed as an Observer, was notconsidered sufficiently effective in protecting the interests of the minoritygroup primarily because he was not conversant either with the

tradeor with the conduct of the affairs of the company. The nomination ofMr. Sood and Mr. Bhasin, which is convassed on behalf of the petitioners on the ground that they lost in the election by a very narrowmargin, would not be justified merely because they lost by a narrowmargin- The petitioner claims the support of a large number of members who are said to have given their consent to the filing of THE petition. The genuineness of the consent has been doubted on behalfof the company and it is alleged that, in any event, the consent hassince been rescinded. Having regard to all the circumstances it appearsto me to be reasonable that any two members of the company, whoare duly elected at a meeting of the petitioner and the members, whohave given their consent to the filing of the petition, which may beheld for the purpose, should be nominated as additional members ofthe Executive Committee. On the assumption of office by the nomineesMr. Joshi shall cease to act as Observer.

(21) I would, Therefore, direct that a meeting of the petitioner andthe members, who are alleged to have given their consent to the filingof the petition, would be convened for the purpose of electing twoadditional members of the Executive Committee, out of the said members. The meeting will be convened and presided over by Shri SatyaDev Sharma, Advocate. The venue, date .and time of the meeting andthe modalities for its convening would be decided by Mr. Sharma inconsultation with the counsel for the parties. Mr. Sharma would bepaid a fee of Rs. 500 in addition to the actual out of pocket expensesto be incurred in convening the meeting. Mr. Sharma would submithis report within four weeks. C.A. 736/76 is disposed of in theseterms.

(22) C.A. 180/77. By C.A. 180 of 1977 the petitioner seeks directions with regard to the procedure for registration of motion pictures, settlementof claim between the members, the imposition of penalty on members for delay in registering motion pictures and the procedure forappointment of arbitrators in the dispute between members.

(23) According to the petitioner vindictive and discriminatory actionhas been taken by the management of the company against someof the supporters of the petitioner, notably Shri J. S. Sood, in thematter of claims by the concerns with which Shri Sood is connectedand in the matter of imposition of penalty on him on account ofdelay in the registration of the picture held by one of his concerns,and in the matter of appointment of arbitrators in the dispute involving him. The petitioner apprehends recurrence of such instance ofvindictive and discriminatory action against the members of the minority group in similar matters in future. It is urged that notwithstanding the registration of a claim by the concerns of Shri Sood in relation toa motion picture the management have threatened to register theaforesaid motion picture in the name of another member, Shri ChamanLal Malhotra, who happens to be a member of the Executive Committee, notwithstanding the Rules that a picture would not be registered if there is an outstanding claim by another member in relationto it. It is further urged that the registration of a motion picture.held by Shri Sood, was deliberately delayed by

the management, interaha, by refusing to supply to him a form for registration and afterthe member was able to get the picture registered a penalty ofRs. 1,000 was imposed on, him under Rules 4 and 9 which was notonly the maximum penalty that could be imposed under the Rulesfor delay in registration but was also an unprecedented act and takenin utter disregard of the principles of natural justice inasmuch asthe penalty was imposed without granting to him a reasonable opportunity of being heard in relation to it. A further contention was raisedthat the power of the Executive Committee of the company to nominate arbitrators in cases of disputes between members had been andwas likely to be misused so as to prejudicially affect the interest ofthe members of the minority group by imposing on the members arbitrators who are for various reasons not acceptable to them therebycompelling them to submit to arbitration by members, who wereeither interested in the proceedings or otherwise hostile or friendlyto one of the parties. Various directions are, Therefore, sought witha view to ensure that the existing Rules, Regulations and norms arcnot allowed to be flouted and the members of the minority group arenot allowed to be subjected to harassment.

(24) On behalf of the company the various allegations are denied.With regard to the registration of claim by Shri Sood in relation toa motion picture it was urged that in terms of Rules no motion picturecould be registered at the instance of a member unless the outstandingclaim of another member in relation to the picture has first beensatisfactorily settled. The allegation that in the case of Shri Sood theregistration of the picture was threatened even though the claim ofShri Sood had been registered in relation to the same picture wasdenied. The allegation that Shri Sood was prevented from registering; the picture within the time envisaged by the Rules was denied and theimposition of the maximum penalty was sought to be justified on theground that there was power in the Executive Committee to imposethe penalty. It was, however, not denied that such a penalty was rarelyimposed and the maximum penalty had almost never been imposed.It was not denied that the member affected had not been given anopportunity of being heard before the penalty was imposed. An attemptwas made to justify the imposition of the penalty on the ground thatthis was m fact not a penalty but a condition for the registration of apicture in respect of which registration was delayed. With regardto the arbitrators it was urged that it was a consistent practice thatwherever any party to the dispute objected to adjudication by a particular arbitrator the arbitrator invariably withdrew. It was, however,not disputed that there was no provision in the Rules with regard tothe matter.

(25) After hearing learned counsel for the parties it appears tome that no directions are necessary with regard to the registration ofa picture in relation to which a claim has been registered by a memberin view of the provision made in that behalf in the Rules and Regulations and the categorical assurance on behalf cf the company that nopicture in relation to which a claim had been made would be allowedto be registered until the claim had been duly satisfied. It is

however.clearly understood that the company would follow such a practiceconsistent with the existing Rules and Regulations.

(26) So far as the penalty is concerned the imposition of the maximum penalty which was admittedly unprecedented and that too without giving any opportunity to the member of being heard before thepenalty was imposed appears to be prima facie unreasonable, eventhough there is no provision in the Rules with regard to the right ofhearing, either on the question of liability to the penalty or as to itsquantum. So far as the practice with regard to the appointment ofarbitrator is concerned it is unfortunate that the relevant rules do notdeal with a situation in which a named arbitrator may either beinterested in one of the parties or in the transaction in dispute or beotherwise a person in whom one of the parties do not have confidenceeven though there is a practice that when any doubt is raised aboutthe impartiality of the arbitrator he would normally withdraw from the proceedings, leaving the company free to appoint another.

(27) Having regard, however, to the unfortunate atmosphere ofconfrontation between the group in the management of the companyand the members of the minority group it would be reasonable andproper to make directions which would safeguard the interest of themembers, leaving, as far as possible, the power of the managementof the company to conduct its affairs unimpaired. In the circumstances,I would make the following directions :

(A)The penalty imposed on M/s. Globe Films on accountof the delayed registration of its picture entitled "MainTuilsi Tere Aangan ki" is set aside, but the company isgranted liberty to consider what penalty, if any, shouldbe imposed on account of delay in registration, after granting to the member concerned a reasonable opportunity ofbearing heard.(b) Pending further orders no penalty would be imposed onaccount of delay in registration without granting to theaffected person a reasonable opportunity of being heard.(c) A member shall not be appointed to be an arbitrator IN a dispute between the members of the company if any ofthe parties to the dispute objects to the arbitration bysuch a member on the grounds that the proposed arbitrator is interested in any of the parties or is hostile to themember, who complains of it, or is otherwise interestedin the subject matter of the dispute. If anyparty to the dispute expresses a desire in writing thatthe matter in dispute be. referred to the arbitration of aperson, other than a member of the company, the Executive Committee shall refer the dispute to any memberof the panel which is hereinafter being constituted.

(28) For the purpose of directions made above I would constitutea panel composed of :

1. Mr. Purushottam Sarup, Advocate.2. Mr. Harbans Singh Mac, Advocate.3. Mr. Mehr Singh Chadha, Advocate.4. Mr. Radha Krishen Mehra, Advocate.The terms of payment of remuneration to the members of the panelwould be as may be determined from time to time by the Presidentof the Executive Committee of the

company in consultation with themember concerned.The application is disposed of in these terms.

