

(2016) 02 DEL CK 0285

In the Delhi High Court

Case No : LPA 474/2015

Central Board of Film Certification and Others

APPELLANT

Vs

Pankaj Butalia and Others

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Cinematograph Act, 1952 — Section 5-B(2), Section 5-C
Constitution of India, 1950 — Article 19(1) (a), Article 19(2)

Citation : (2016) 3 ADDelhi 665 : (2016) 155 DRJ 220

Hon'ble Judges : G. Rohini, C.J. and Jayant Nath, J.

Bench : Division Bench

Advocate : Gaurav Sarin, Ajitesh K.K. and Shraddha Bhargava, Advocates, for the Appellant; Colin Gonsalves, Sr. Adv., Jatinder Pal Singh, Divya Sunderrajan and Kamlesh Kumar Mishra, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

G. Rohini, C.J.

1. This appeal is preferred against the order of the learned Single Judge dated 25.05.2015 in W.P.(C) No. 675/2015. The respondents in the petition i.e. Central Board of Film Certification and Ministry of Information and Broadcasting, Union of India are the appellants before us.

2. The first respondent herein/writ petitioner produced and directed a documentary film titled "The Textures of Loss". The Central Board of Film Certification permitted the exhibition of the said film subject to four excisions/deletions specified therein and insertion of the following disclaimer at the beginning of the film:

"views expressed by individuals in the documentary are solely their own views. Their views are not intended to hurt/defame any person, caste, community, religion, institution or organization".

3. The first respondent herein (hereinafter referred to as the "writ petitioner")

preferred an appeal under Section 5-C of the Cinematograph Act, 1952 (for short "the Act") and the same was disposed of by the Film Certification Appellate Tribunal (for short "Appellate Tribunal") by order dated 11.09.2014 upholding the decision of the Central Board of Film Certification (CBFC) to the extent of two out of four excisions and insertion of disclaimer. Aggrieved by the same, the writ petitioner filed W.P.(C) No. 675/2015. By the order under appeal the learned Single Judge set aside the decisions of both CBFC and the Appellate Tribunal and held that a "U" Certificate shall be issued to the film in question without any deletions/excisions. The direction to insert the disclaimer has also been set aside. Hence, the present appeal.

4. We have heard the learned counsel for both the parties.

5. The documentary film in question is approximately 61 minutes of duration. The film is based on the case studies stated to have been made by the petitioner of the people who were affected by long term violence in the valley of Kashmir and the film attempts to portray the sufferings of people in Kashmir. The film contains interviews with the family members of some of the victims of violence, who while narrating the incidents of violence, explained how the same had affected their lives and the mental trauma suffered by them. The film also included the views of psychiatrists and counsellors about the trauma and emotional turmoils of the family members of the victims and other residents. Though the people spoke in Kashmiri, the film is screened with English sub-titles.

6. A perusal of the order of CBFC dated 30.12.2013 shows that while directing four incisions and insertion of a disclaimer, no reasons were assigned by CBFC. The Appellate Tribunal, as mentioned above, reduced the incisions from four to two and confirmed the insertion of disclaimer as suggested by CBFC.

7. The two incisions upheld by the Appellate Tribunal and the reasons assigned therefor are as under:

"(c) The 3rd suggested cut from 00:39:34 to 00:39:36 from "disproportionate violence" line from textual graphics plate has been recommended by CBFC to be deleted. The expression "With Disproportionate Violence" does not do justice to the role of the security forces who faced a storm of stone throwing. The action of the forces was partly in self defence and secondly to deter occurrence of stone throwing incidents. The Tribunal accordingly agrees with CBFC that the expression "With Disproportionate Violence" should be deleted as this could have a demoralizing effect on the security forces/ police who were actually victims of stone throwing incidents.

(e) The 5th suggested cut from 00:44:04 to 00:44:15 from "I beg Allah..... all their families". This is most objectionable and CBFC has rightly directed this to be deleted. This sentence speaks against India as a nation and uses expression such as India be damned. We agree with CBFC for deletion of this as this is in violation of the Guidelines for exhibition of film for public exhibition and also borders on anti-national statement....."

8. For proper appreciation of the two incisions directed by the Appellate Tribunal, the text of complete statement as it appears in the film may be reproduced:

Incision No. 3. from 00:39:24 to 00:39:36

The situation in Kashmir took a turn for the worse in 2010. Militancy linked activities were replaced by a kind of spontaneous intifada. Thousands of stone pelting young men took to the streets in Srinagar and towns around. The para-military forces responded with disproportionate violence which resulted in the deaths of over a hundred young men. The most tragic deaths were those of two young boys Sameer and Wamik. Sameer was eight years old and Wamik was twelve.

Incision No. 5 at 00:44:04

I beg Allah that this kind of an India be damned that the whole of this India be damned and of our Government here and all their families like they've ruined our whole family."

9. Regarding the use of expression "disproportionate violence" in the Incision No. 3, the learned Single Judge opined that it is an articulation of the opinion of the petitioner and that it does not necessarily mean that it is a point of view with which every other person agrees. So far as Incision No. 5 is concerned, the learned Single Judge held that the Appellate Tribunal has completely misguided itself by not appreciating the context in which the statement has been made and that the said statement seen in the context of circumstances could not be categorized as anti-national as is sought to be portrayed by the respondents. Thus, the decision of CBFC as confirmed by the Appellate Tribunal regarding both the above-mentioned incisions has been set aside.

10. Though the direction for insertion of disclaimer has also been set aside by the learned Single Judge observing that such insistence is untenable, it has been submitted by the learned Senior Counsel appearing for the respondent No. 1/writ petitioner before us during the course of the hearing that the respondent No. 1/writ petitioner has no objection regarding the insertion of the said disclaimer and therefore the appeal to that extent is not opposed.

11. Hence, the only question that requires consideration by us is whether CBFC and the Appellate Tribunal are justified in directing the abovesaid two incisions.

12. It is contended by Shri Gaurav Sarin, the learned counsel appearing for the appellants that the film in question being on a sensitive topic of violence in Kashmir, the whole issue required consideration with due care and caution keeping in view the issues of upholding the sovereignty and integrity of India. Drawing our attention to the specific provisions of the Cinematograph Act, 1952, Cinematograph (Certification) Rules, 1983 and the Guidelines of 1991 issued by the Central Government in exercise of the powers conferred under Section 5-B(2) of the Act, it is vehemently contended by the learned counsel for the appellants that the impugned decision of CBFC and the Appellate Tribunal which are expert

statutory bodies cannot be held to be erroneous on any ground whatsoever. It is also submitted by the learned counsel that the incisions directed by CBFC and the Appellate Tribunal do not alter the theme of documentary film but are only aimed at protecting the interest of sovereignty and integrity of India as enshrined in Article 19(2) of the Constitution of India. Pointing out that the film in question is a documentary depicting the views of the people on real incidents and thus is different from commercial feature films based on fiction, the learned counsel contended that there is every likelihood of the contents of such documentary prejudicing and influencing the thought process and actions of the audience.

13. We have also heard Sh.Colin Gonsalves, the learned senior counsel appearing for the respondent No. 1/writ petitioner who supported the order under appeal. On our request, the learned senior counsel has also made available the film in question in a pen drive and we have viewed the same.

14. It may be true that the issue of violence in Kashmir is a sensitive topic, however, we do not find any objectionable material in the film in question. The writ petitioner has made an attempt to portray the life of the people in the valley of Kashmir, who were affected by long term violence by interviewing the family members of some of the victims of violence. The persons who were interviewed had merely narrated their experiences and the loss suffered by them on account of the conflict between the militants and the security forces/police. The statements of the persons in the interview were their personal views and the same can neither have any demoralizing effect on the security forces nor can they be termed as anti-national. All that the film seems to depict is the emotions of the persons who lost their dear ones in the violence. Moreover the film is a documentary and cannot be equated with the motion pictures which generally cater for mass audience.

15. As rightly observed by the learned Single Judge the statement of the father of the child who was killed in one of the incidents of violence, if seen in the context of circumstances cannot be held to have the effect of demoralizing the security forces, much less can be held to have conveyed an anti-national sentiment. On the contrary, it depicts the agony of the victims of violence. In *S.Rangarajan vs. P.Jagjivan Ram* , (1989) 2 SCC 574, the Supreme Court while dealing with an identical issue observed:

"45..There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like

the equivalent of a "spark in a power keg."

16. The further observations of the Supreme Court in S.Rangarajan vs. P.Jaggivan Ram (supra) at para 40 and para 53 may also be usefully extracted hereunder:

"40. Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of. But he has a right to "think out" and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however hateful to its policies

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53. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1) (a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself. "

17. In the light of the settled legal position, we are of the view that if the statements which are directed to be deleted by the Appellate Tribunal are judged from the point of view of the theme of the film, they cannot be held to be objectionable on any ground whatsoever.

18. We, therefore, entirely agree with the conclusion of the learned Single Judge that the film in question shall be issued "U" Certificate without deletions/excisions ordered by the Appellate Tribunal and the order under appeal to the said extent warrants no interference. So far as the insertion of the disclaimer is concerned, as already mentioned above, the respondent No. 1/writ petitioner has agreed to insert the same.

19. The appeal is accordingly disposed of.