
(2017) 11 DEL CK 0195

In the Delhi High Court

Case No : Civil Writ Petition No. 5203 Of 2013, Civil Miscellaneous No. 11685 Of 2013

Edara Gopi Chand

APPELLANT

Vs

Union Of India & Anr.

RESPONDENT

Date of Decision : 24-11-2017

Acts Referred:

Cable Television Networks Rules, 1994 — Rule 6, 6(5), 21, 21(1), 33, 33(1), 35
Cinematograph Act, 1952 — Section 3, 4(5)(iii), 5A, 8

Citation : (2017) 11 DEL CK 0195

Hon'ble Judges : Gita Mittal, J; C. Hari Shankar, J

Bench : Division Bench

Advocate : Gaurav Kumar Bansal, Abha Malhotra, Tejveer Singh Bhatia, Kapil Midha

Final Decision : Dismissed

Judgement

Gita Mittal, J

1. This writ petition, claiming to be in public interest, has been filed seeking the following prayers :

â??(i) To strike down the communication/order dated 23-6-1995 issued by the respondent 2 (giving rise to the practice of re-certification of

â??Aâ?? & â??U/Aâ?? films into â??Uâ??) and quash the resolution of CBFC passed in its 131st (Extraordinary) Board Meeting held on

24-7-2012 (to continue with the practice of conversion of â??Aâ?? films into â??Uâ?? for the purpose of their telecast in television) as

they amounted to ultra vires on part of CBFC and had the effect of stultifying the relevant provisions of the Cinematograph Act, 1952 and

Cable Network Regulation Rules, 1994;

(ii) to direct Respondent No.01 to issue necessary orders to all the private satellite TV Channels, all channels owned and operated by

Prasar Bharathi, all local cable network operators, all IPTV service providers and any other television service providers in the country

restraining them from telecasting any film which was originally certified as 'A' by CBFC but was subsequently modified/re-certified

into 'V/UA' or 'V/U';

(iii) To direct Respondent No.01 to cause close monitoring of compliance of the order referred in (ii) above by all television channels and

cable networks in the country with the assistance of Electronic Media Monitoring Centre (EMMC) (a sub-ordinate organization functioning

under the aegis of respondent no.1 with an exclusive mandate to monitor the violations of statutory programme & advertising codes by the

private TV & FM Radio channels);

(iv) To issue necessary directions to Respondent no.1 to prescribe separate 'certification norms' and 'ratings/categories' for

films meant for broadcast on television in a time-bound manner, i.e., within a reasonable time frame as may be prescribed by the

Hon'ble Court;

(v) To direct Respondent No.1 to suitably amend the Programme Code (Rule 6 of Cable Television Networks Rules, 1994) providing for

specific timings (in consonance with Rule 6(5) of the Cable Television Networks Rules, 1994 and in line with their own order dt. 21-4-2012

in respect of telecast of the film, 'The Dirty Picture') and any other conditions as deemed fit to govern telecast of 'U/A' films on

the television.

(vi) Pass any other Order or Directions as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the present

case.

2. On the last date of hearing i.e. the 7th of November 2017, we had recorded the following order:

1. We have grave doubts about the maintainability of this writ petition which assails the change of pre-certification effected by the

Central Board of Film Certification.

2. Learned counsel for the petitioner prays for an adjournment to make submissions on this issue.

3. List on 24th November, 2017.â??

3. Today, it is insisted by Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner that the petitioner has an extremely good case in facts as well as in

law to support the above prayers.

4. The primary ground of challenge raised in this writ petition is to the effect that once having accorded a certification to a film under Section 5A of

the Cinematograph Act, 1952, the Central Board of Film Certification, constituted by the Central Government under Section 3 of the said enactment,

has no power to grant a â??re-certificationâ? to the film. In support of this submission, Id. counsel for the petitioner has placed reliance on the

statutory scheme, more particularly, Section 5A of the enactment, which for reasons of expediency, is extracted hereunder :

5A. Certification of Films â?" (1) If, after examining a film or having it examined in the prescribed manner, the Board considers thatâ?

(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 section 4, it shall grant to the person applying for a certificate in respect of the film a â??Uâ? certificate or, as the

case may be, a â??UAâ?? 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 to 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 â??Aâ?? certificate or, as the case may be, a â??Sâ?? certificate.

and cause the film to be so marked in the prescribed manner:

Provided that the applicant for the certificate, any distributor or exhibitor 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).]

(2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout

India for a period of ten years.

5. It is a categorical assertion of Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner that the films which were granted ""A"" certification, i.e. fit

for public exhibition to adults only, have been illegally re-certified by the respondents as either ""U/A"", i.e. unrestricted public exhibition but with

parental guidance, or â??Uâ?, i.e. universal exhibition. The submission of Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner is that as a result, a

film which is supposed to be only for adult viewing or one which could be viewed only under parental guidance, is enabled to be exhibited under the

unrestricted category.

6. The other submission of Id. counsel for the petitioner is that the respondents have enacted the Cable Television Networks (Regulation) Act, 1995

incorporating the â??Programme Codeâ? in Rule 6 of the Cable Television Networks Rules, 1994 framed thereunder. The provisions of these Rules

which are relied upon by Id. counsel for the petitioner also deserve to be extracted in extenso and read thus :

6. Programme Code. - (1) No programme should be carried in the cable service which -

xxx xxx xxx

(o) is not suitable for unrestricted public exhibition.

xxx xxx xxx

(4) Care should be taken to ensure that programmes meant for children do not contain any bad language or explicit scenes or violence.

(5) Programmes unsuitable for children must not be carried in the cable service at times when the largest numbers of children are viewing.

7. We have heard Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner at length as well as Ms. Abha Malhotra, Id. counsel for the respondents

and Mr. Kapil Midha, Id. counsel for the intervenor.

8. On a consideration of the submissions made, it would appear that the entire writ petition is premised on a complete misconception as to the manner

in which the respondents are providing certification to the films. The writ petition itself discloses that a film after certification is subjected to changes

and is presented before the Censor Board when it is re-certified.

9. It has been contended before us by Ms. Abha Malhotra, Id. counsel for the respondents and Mr. Kapil Midha, Id. counsel for the intervenor that

such modified work has to be considered afresh and granted a fresh certification, which cannot be remotely considered as a recertification of the

original work.

10. Once an original film has been subjected to modifications, changes, alternations (cuts or changes), it does not remain the original work which was

granted the certificate under Section 5A of the Cinematograph Act, 1952, which is extracted above. It cannot be denied that such a film would require

to be presented again to the Censor Board, before it can be exhibited in accordance with the scheme of the Cinematograph Act, 1952.

11. It also cannot be contended or held that such changed piece of work has to be treated as the original piece of work and the certification originally

granted has to be maintained so far as this modified or changed film is concerned. So far as consideration by the Censor Board is concerned, once

modified, changed or altered, the original film ceases to exist.

12. With regard to the aspect of the manner in which the Censor Board considers the modified work which is presented to it and the competency to

do so, our attention has been drawn to the provisions of the Cinematograph (Certification) Rules, 1983. It is an admitted position that these Rules have

been framed in exercise of the statutory power conferred under Section 8 of the Cinematograph Act, 1952. The petitioner as well as his counsel Mr.

Gaurav Kumar Bansal accept that there is no challenge to the legality or the validity thereof.

13. Reliance has been placed before us on the provisions of Rules 21 and 33, the relevant portion whereof is extracted thus :

21. Application for examination of films. - (1) Every application to certify a film for public exhibition shall be made in writing in [Form I

or Form IA or Form II or Form IIA, as the case may be, I set out in the Second Schedule according as the film is produced in or imported

into India.

(Emphasis by us)

14. It is necessary also to consider the explanation provided by the Legislature to Rule 21 which reads thus :

Explanation - For the purpose of certification for public exhibition every revised version or shorter version of a film shall be deemed to be a fresh film.

(Emphasis by us)

15. We may also extract the relevant provisions of Rule 33(1) and (5) hereunder :

33. Alteration of film after issue of certificate.â?"(1) When a film is altered by excision, addition, colouring or otherwise after it has been

certified under these rules, it shall not be exhibited unless the portion or portions excised, added, coloured or otherwise altered, have been

reported to the Board in Form III in the Second Schedule and the Board has endorsed the particulars of the alteration or alterations on the

certificate.

xxx xxx xxx

(5) Where the film or any portion thereof as the case may be, is re-examined under this rule, the Chairman shall unless for reasons to be

recorded in writing, he declines permission for the alteration, make suitable endorsement in the certificate granted in relation to the film.

(Emphasis by us)

16. So far as the Forms which have been referred to in Rule 21(1) are concerned, Ms. Abha Malhotra, Id. counsel for the respondents has taken us

through the stipulations contained in the Forms which are provided in Schedule II to the said Rules. More specifically, our attention has been drawn to

the requirements stipulated in Forms I, 1A and II prescribing forms for applications for certification of a film produced in India, video film produced in

India and film imported into India which deserve to be considered in ex tenso and read thus :

â??SECOND SCHEDULE

FORM 1

Form of application for certification for public exhibition of a film produced in India.

(See sub-rule 1 of rule 21)

No. and date of application (to be entered by Boardâ??s office)

To

The Central Board of Film Certification through the Regional Officer
at Application for certification for public exhibition

of a film produced in India at.

xxx xxx xxx

5. Has any pervious application been made to certify this film as suitable for
public exhibition in India? If so,

(a) Where and to whom was it made

(b) What was the result of the application

*(i) A ???Uâ??/â??UAâ??/An â??Aâ??/â??Sâ?? certificate No.....dated
was granted subject to the following cuts

.....

*(ii) Certificate was refused.

xxx xxx xxxâ??

â??SECOND SCHEDULE

FORM I-A

Form of application for certification for public exhibition of a video film produced
in India

[See sub-rule (1) of rule 21]

No. and date of application (to be entered by Boardâ??s office)

To

The Central Board of Film Certification through the Regional Officer
at

Application for certification for public exhibition of a video film produced in India
at.....

xxx xxx xxx

4. (a) xxx xxx xxx

(b) Whether the video film is a modified version of a certified Cinematograph film
on celluloid containing additions, deletions/other

alternations (details of modification may be provided).

xxx xxx xxxâ??

â??SECOND SCHEDULE

FORM -II

Form of application for certification for public exhibition of a film imported into India

[See sub-rule (1) of rule 21]

No. and date of application (to be entered by Board's office)

To

The Central Board of Film Certification through the Regional Officer at

Application for certification for public exhibition of a film first imported into India at

xxx xxx xxx

5. Has any previous application been made to certify this film (under its present or any other title) in

(a) India :

(b) United State of America :

(c) United Kingdom :

(d) Any other country :

If so,

(i) Where and to whom was it made?

(ii) What was the result of the application i.e.

*(i) A / An certificate No. _____ date _____ was granted subject to the following cuts :

*(ii) Certificate was refused.

In the case of film made in the United States of America, state the rating of this film according to (a) the national groups and (b) the legion

of decency.

(a) _____ (b) _____

xxx xxx xxx

(Emphasis supplied)

17. Our attention has also been drawn to Form-III which is relatable to Rule 33, relevant portion whereof is extracted thus :

FORM - III

(See rule 33)

(to be submitted in duplicate)

REPORT UNDER RULE 33 OF THE CINEMATOGRAPH
(CERTIFICATION) RULES, 1983, REGARDING AN
ALTERATION OR ALTERNATIONS IN A
CERTIFICATE FILM.

xxx xxx xxx

4. Particulars of alternations :

Reel No..... Scene No..... Description of the scene/dialogue/song
length.

(Specify the exact alteration or alterations, length and the number of the reel or
reels in which the alteration or alterations occurs or occur).

In case of (films on video tape or compact video disc), instead of length and
number of reels, duration in minutes and number of cassettes

may be given,

(Emphasis supplied)

Thus the applicant under Rule 33 has to give exact details of the modification.

18. It is submitted by Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner
that his submissions are fortified by the Resolution dated 24th of July

2012 of the Central Board of Film Certification in its 131st Board Meeting
(Extraordinary).

19. Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner has relied upon the
similar doubts which were expressed by Board members in this

meeting to the effect that the Cinematography Act, 1952 "does not talk about
the process of conversion of film from "A" to "U" or

"U/A" category". In this meeting, the Board had passed the following
resolution :

"The Board unanimously passed the following resolution :

When a film that was certified "A" in the original version is submitted to
CBFC for conversion to "UA", the Board may take the

following course of action while permitting conversion of a film along with a
speaking order:

(a) Refuse/reject the conversion from "A" to "UA";

(b) Permit the conversion from A to UA along with an endorsement that the film be telecast only between 11.00 PM to 6.00

AM.

(c) Permit the conversion from A to UA along with an endorsement that the film may be telecast at anytime.

It was further resolved to request the Ministry to issue appropriate notification as soon as possible as there were many applications pending

consideration with CBFC and in the absence of clear written directive in this regard from the Ministry, no applications could be further

processed.

20. A bare reading of the above extracted explanation to Rule 21 would show that, the statutory scheme envisages revision of a film or a shorter

version of the film. The Rules clearly stipulate that such revised version or shorter version of film shall be deemed to be a fresh film. The submission

of the petitioner therefore, that the Censor Board has no power to examine such a modified or a shorter version of film is completely de hors the Rules

and the statutory provisions.

21. The above statutory provisions and the rules clearly support our finding that once the modification, alteration, deletion or change is effected in a

cinematographic work, it ceases to remain the original work which has been certified and has to be treated as a fresh cinematographic work.

22. The Legislature has further provided for not only a shorter version of the film but has anticipated alteration of a film after issuance of a certificate

in Rule 33. Reference is made to "alteration by excision, addition, colouring or otherwise" even "after it has been certified under these rules". Rule

33 prohibits exhibition of such altered film unless such portion or portions excised, added, coloured or otherwise altered have been reported to

the Censor Board in Form III in the Second Schedule and the Board has endorsed the particular alteration or alterations on the certificate. It would

appear that so far as Rule 33 is concerned, the Legislature permits even alterations on the original certification which was granted to the film.

23. We may also refer to the powers of the Censor Board while undertaking an examination of a film submitted for examination. In this regard,

Section 4(5)(iii) mandates as follows :

4. Examination of films . -

xxx xxx xxx

5(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public

exhibition under any of the foregoing clauses; or

xxx xxx xxxâ??

Therefore, the Legislature has itself empowered even the Censor Board to direct excisions or modifications in the film, as it thinks necessary before

sanctioning the film for exhibition under any of the foregoing clauses, which have been submitted for certification.

24. It is obvious that the members of the Board who expressed such misgivings failed to consider the fact that when a film which was once certified

earlier would not remain the same film after modification were effected to it. The members of the Board overlooked the fact that this completely

changed or altered or modified the work which cannot legally be exhibited without an appropriate certification by the Censor Board.

25. In this regard, it is submitted by Ms. Abha Malhotra, Id. counsel for the respondents that given the nature of misconceived misgivings expressed by

the members of the Board, the Government of India has proposed a Bill to amend the existing statutory provisions so as to further clarify the position.

26. The reliance placed by Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner on observations made in a report by the Comptroller and Auditor

General is also misconceived given our discussion on the prevalent statutory scheme, its intendment and purpose.

27. Mr. Kapil Midha, Id. counsel for the intervener has placed reliance on a judgment dated 23rd August, 2006 rendered by a Division Bench of the

High Court of Judicature at Bombay in a Public Interest Litigation No.1232/2004, Pratibha Naitthani v Union of India & Or.s wherein the court had

considered the provisions of the Cinematograph Act, 1952 as well as the provisions of the Cable Television Networks (Regulation) Act, 1995. The

issues which were considered by the court have been enumerated in para 5 of the judgment which reads thus :

â??5. The two issues that were debated before us today during the course of hearing may be articulated thus :

(i) Are the broadcasters (foreign or otherwise) and the DTH service providers amenable to the provisions of Cable Television Networks

(Regulation) Act, 1995 and the Rules framed thereunder and thereby bound by the Programme Code and the order dated 21st December, 2005, and

(ii) Does our order dated 21st December, 2005 restrict the exhibition of the films certified "U/A" by C.B.F.C.?

28. In the above judgment, the court extracted the relevant provisions of the Cinematography Act, 1952 in para 22 which is reproduced hereunder :

"22. ...The films carrying certificate "U" and "U/A" belong to the same class of films viz, for unrestricted public exhibition.

Insofar as video or compact disc (CD) of the films are concerned, Rule 35 provides certificate certifying the film as "U" or "V" or

"V/UA", as the case may be. ..."

29. It is well settled that the writs cannot be issued in vacuum. We have repeatedly put to Mr. Gaurav Kumar Bansal, Id. counsel for the petitioner to

point out even a single incident in the entire writ petition, which runs into 36 pages, of a film, which had been certified as category "A" as it contained

material which could be objectionable for particular category of viewers, and was recertified in an unmodified form and exhibited to the prejudice of

the society or the viewers. The writ petition does not disclose a single incident nor Id. counsel for the petitioner able to particularly inform this court

about any such incidents.

30. We may also note that practice which is developing of mere reliance on statutory provisions, making sweeping assertions of violations, without

pointing out any specific violation thereof and seeking orders from the court that statutory provisions are being violated. The practice of filing such writ

petitions has to be deprecated and must be nipped in the bud.

31. In view of the above discussion and more particularly, the fact that the petitioner is unable to point out a single incident to support his contention,

we are of the view that the contention of the petitioner that there is violation of any provisions of the programme code under Rule 6 of the Cable

Television Network Rules, 194 is also baseless and has to be rejected. To say the least, this writ petition is completely misconceived and ought not to

have been entertained in public interest.

32. We may note that we began hearing this writ petition at 11:15 am. We had spent time on this writ petition on the last date as well. We had

specifically requested Id. counsel for the petitioner to restrict his submissions within a particular period of time. It is now 12:15 pm. In our view, valuable judicial time has been caused to be expended without any factual or legal basis for the submissions. In fact, it is duty of every party to fully inform himself of the entire statutory position before making a submission in law. In our view, the instant writ petition has been filed without considering the specific provisions of the cinematographic rules.

33. There is no public interest involved in this writ petition as well.

34. For all the foregoing reasons, this writ petition is dismissed with costs which are quantified at Rs. 50,000/-. 50% of costs shall be paid to the respondent no.1 â?" Ministry of Information and Broadcasting and rest of the 50% costs shall be deposited with the Delhi High Court Bar Association Lawyersâ?? Social Security & Welfare Fund.

The deposit of the costs shall be effected within two weeks from today and proof of deposit shall be forthwith placed with the Registry.