

(2013) 11 AHC CK 0168

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10220 of 2013

Hindu Personal Law Board

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2013) 9 ADJ 705 : (2014) 1 ALJ 558

Hon'ble Judges : Imtiyaz Murtaza, J;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Advocate : Asok Pande, for the Appellant; Bireshwar Nath and Raj Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Asok Pande, the President of the petitioner-organization in person, Sri Raj Kumar Singh, learned counsel appearing for Union of India and Sri Bireshwar Nath, learned counsel who appeared for Central Bureau of Investigation. This petition has been filed with the followings prayers:

1. Issue a writ of mandamus commanding the respondent No. 1, Ministry of Information and Broadcasting to immediately remove Ms. Leela Samson, Chairman, Central Board of Film Certification (Censor Board for short-respondent No. 2) from her post and to dissolve the entire Censor Board by removing all its present members for their anti-Hindu attitude whereby they have been acting incessantly against the statutory provisions under the Cinematographer's Act 1952 (the Act, for short) as explained in the Writ Petition.

2. Issue a writ of mandamus commanding the respondent No. 1 to appoint a retired Hon'ble High Court or Hon'ble Supreme Court Judge as the Chairman of the Censor Board alongwith a few retired/serving IAS and IPS officers considering the statutory nature of work done by the Censor Board alongwith a few members of various religious groups like the Hindu Personal Law Board, the Muslim Personal Law Board and others to take consideration of the religious

sentiments of the various important religious groups.

3. Issue a writ of mandamus commanding the respondent No. 4, the Central Bureau of Investigation to enquire into the way presently dates of release of feature films get fixed even before the submission of the film before the respondent No. 2, Censor Board and the films actually get released on those pre-announced dates which gives a very strong inkling that some kind of illicit and improper collusion remains between the Censor Board and the film makers which makes the film makers so confident as to announce the date of release even much earlier than the film has been submitted for certification before the Censor Board.

4. Issue any other order or direction in the interest of the petitioner or in the interest of justice as this Hon"ble Court may deem fit in the circumstances of the case.

2. On 31.10.2013, a coordinate Bench of this Court passed the following order:

Petitioners are aggrieved from Chairman, Censor Board and other members with regard to alleged anti-Hindu sentiments and accordingly prayer has been made for removal. A prayer has also been made for appointment of other qualified person.

Writ petition seems to have been preferred in public interest.

Let it be placed before a Bench seized with the PIL matter today itself as fresh.

3. In pursuance of the aforesaid order dated 31.10.2013, this petition has been sent to this Bench which as per roster determined by Hon"ble the Chief Justice is having the jurisdiction to hear the PIL matters.

4. A preliminary objection as regards the maintainability of the writ petition has been raised by the learned counsel appearing for Union of India who submitted that the petitioner has not filed an affidavit in terms of the provisions contained in sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court which was inserted by notification dated 1.5.2010. By the said notification Allahabad High Court (Amendment) Rules, 2010 was notified whereby a person seeking to file a Public Interest Litigation has been required to precisely and specifically state in the affidavit to be sworn in by him giving his credentials, the public cause he is seeking to espouse and further that he has no personal or private interest in the matter and that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised. The amendment Rules, 2010 further require that petitioner who files PIL is also required to state in the affidavit that result of the litigation will not lead to any undue gain for himself or anyone associated with him, or any undue loss to any person, body of persons or the State.

5. The notification dated 1.5.2010 whereby sub-rule (3A) of Rule 1 of Chapter XXII has been inserted in the Rules of the Court runs as under:

HIGH COURT OF JUDICATURE AT ALLAHABAD AMENDMENT SECTION
NOTIFICATION

No. 105/VIIIc-2 Dated: Allahabad: May 1, 2010

Correction Slip No. 241

In exercise of the powers conferred by Article 225 of the Constitution of India and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad is pleased to make the following amendment in Chapter XXII of the Allahabad High Court Rules, 1952 Volume I with effect from the date of its Publication in the Official Gazette;

THE ALLAHABAD HIGH COURT (AMENDMENT) RULES, 2010

In the Allahabad High Court Rules, 1952, the following sub-rule (3A) in Rule 1 of Chapter XXII shall be inserted:

(3 A) In addition to satisfying the requirements of the other rules in this Chapter, the petitioner seeking to file a Public Interest Litigation, should precisely and specifically state, in the affidavit to be sworn by him giving his credentials, the public cause he is seeking to espouse; that he has no personal or private interest in the matter; that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised; and that the result of the Litigation will not lead to any undue gain to himself or anyone associated with him, or any undue loss to any person, body of persons or the State.

EXPLANATORY NOTE

(This is not a part of the sub-rule (3A) but is intended to indicate its general purport)

The Hon'ble Supreme Court of India in its judgment in State of Uttaranchal Vs. Balwant Singh Chauhan and Others, , has observed that the process of Court is frequently abused in the name of Public Interest Litigation and has directed all the High Court to frame rules to prevent the same. The aforesaid amendment is intended to achieve the said objective.

By order of the Court. Sd. Dinesh Gupta Registrar General

6. Replying to the preliminary objection raised by learned counsel appearing for Union of India, Sri Asok Pande submitted that this petition was not filed as Public Interest Litigation; rather the same has been ordered by a coordinate Bench of this Court to be heard by the Bench seized of the PIL matters as such requirement of filing the affidavit in terms of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court does not have any applicability to the instant case. Hence, he does not intend to file the requisite affidavit to fulfill the requirement envisaged by the aforesaid sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court.

7. The petitioner-organization is alleged to be a duly registered trust formed

under the Indian Trusts Act. The petitioner-organization, as per averments made in the writ petition, is the upholder of personal laws of the Hindus all over the world and is also concerned with all affairs related with the Hindus.

8. The grievance raised by the petitioner in this petition is that the manner in which at present the Central Board of Film Certification, a statutory body formed under the Cinematograph Act, 1952 is working, has rendered the provisions contained in Section 5B of Cinematograph Act meaningless. It has been averred further that Central Board of Film Certification has not been adhering to the principles for guidance in certifying films for public exhibition as provided u/s 5B of the Cinematograph Act inasmuch as the certificates for public exhibition of films are being granted without considering the issues relating to public order, decency and morality. It has further been averred that the films are being certified for public exhibition overlooking the provisions of Section 5B of the Cinematograph Act and in fact, even the films containing vulgar and lecherous scenes and contents which offend sentiments of citizens belonging to a particular religious denomination are being given certificates for public exhibition is ignoring the statutory provisions. Certain instances of some dialogues and the wordings of film songs have also been quoted to emphasize the assertion that Central Board of Film Certification is not acting as per mandate of Section 5B of Cinematograph Act which warrants removal of its Chairman and other members. Certain suggestions have also been given in the writ petition such as appointment of retired Hon'ble Judges of High Court or retired Judges of Hon'ble Supreme Court to the Central Board of Film Certification who have knowledge of related laws and who can take appropriate decision. Certain other suggestions like appointment of members of Indian Administrative Service and Indian Police Service, both retired and working, to be members of Central Board of Film Certification have also been made on account of their experience and knowledge of laws which can be better utilized while deciding the matters relating to certification of films for public exhibition. Certain other suggestions like change of the constitution of Censor Board to include members from various religious Boards like the Hindu Personal Law Board and the Muslim Personal Law Board have also been made so that Censor Board is able to guard sensibilities of various religions.

9. Having heard the learned counsels for the parties, we feel that the issue of maintainability of writ petition for want of fulfillment of the requirement of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court needs to be enquired into and dealt with at the threshold.

10. Sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court was inserted pursuant to the pronouncement of the Hon'ble Apex Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , wherein all the High Courts of the country were requested to frame Rules to prevent the abuse of the process of the Court in the name of Public Interest Litigation. The Allahabad High Court (Amendment) Rules, 2010 has been framed in compliance of the

observations made by the Hon''ble Apex Court in the case of State of Uttranchal v. Balwant Singh Chauhal and others (Supra).

11. Dealing with the aforesaid issue, this Court in the case of Sabhajeet Singh [P.I.L.] Criminal Vs. State of U.P. and Others, , has observed that sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court has been made for being adhered to. The said observations, made in para 14 of the aforesaid judgement, are being reproduced hereunder:

In the light of aforesaid observations made by the Hon''ble Supreme Court in the cases of Balwant Singh Chauhal and others (supra) and M/s. Holicow Pictures Pvt. Ltd. (supra), the Court opines that fulfillment of the requirement of the amendment inserted in the High Court Rules vide notification dated 1.5.2010 should not be taken lightly. Rules have been framed for being adhered to. Any person filing Public Interest Litigation has to satisfy the Court that he has a credible locus and also that he has filed the writ petition in larger public interest. In the instant case, the writ petition does not disclose even a single word about the credentials of the petitioner and his antecedents.

12. True, this petition has been heard as PIL as the matter has been sent to this Bench under the orders of a coordinate Bench passed on 31.10.2013. It is to be noticed that treating this matter as PIL, the petition has been sent to be heard to this Bench having jurisdiction to hear the PIL. Once the matter is being heard as PIL, there is no question of the petitioner denying to file the affidavit in fulfillment of the requirement of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court.

13. Submission of Sri Pande that since petition was not filed as PIL, rather it has been sent by a coordinate Bench to this Bench to be heard as PIL as such the requirement of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court does not have any application in the instant case, is wholly misconceived. Merely because this petition has been sent by a coordinate Bench to be heard as PIL will not alter the applicability of the Rules of the Court so far as the present petition is concerned. Admittedly, the present petition is being heard as PIL, hence petitioner is under obligation to file an affidavit in terms of the provision contained in sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court. He cannot be exempted from the aforesaid requirement of filing affidavit.

14. We are of the considered opinion that every Public Interest Litigation petition filed before this Court must contain the affidavit in terms of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court. Once such an affidavit is filed, the Court can examine the credentials of the petitioner and other contents of the affidavit in the wake of the provisions of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court and hold whether the matter needs to be proceeded as PIL or not. But in absence of such an affidavit, it cannot be examined by the Court as to whether the petitioner invoking the PIL jurisdiction of this Court fulfills the requirement of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of

the Court or not. Absence of such averments on affidavit incapacitates the Court to form an opinion about the petitioner fulfilling the requirement of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court.

15. Since in the instant case neither any averment on affidavit in terms of requirement of sub-rule (3A) of Rule 1 of Chapter XXII of the Rules of the Court has been made in the writ petition nor any such intention has been shown by Sri Pande who appears in person for the petitioner-organization in his capacity as its President, as such we are constrained to hold that writ petition is not maintainable. Accordingly, the writ petition is dismissed at its admission stage.