
(2020) 02 J&K CK 0060

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) Public Interest Litigation No. 01 Of 2020, CM no. 472 Of 2020

Iftikhar Misger And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 07-02-2020

Acts Referred:

Jammu And Kashmir Public Safety Act, 1978 — Section 8(3)
Cinematograph Act, 1952 — Section 5(B), 5(C), 6(1)

Citation : (2020) 02 J&K CK 0060

Hon'ble Judges : Ali Mohammad Magrey, J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : Shafqat Nazir, Shabir Ahmad Bhat, D. C. Raina, B. A. Dar, Tahir Shamsi, Anil Bhan

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. The petitioners claim to be respectable citizens of India. Their credentials, as stated in the petition, are that petitioner no.1 is a businessman and a social activist; petitioner no.2 is a freelance journalist and political analyst; and petitioner no.3 is a practicing Advocate and a social activist. It is averred in the petition that this writ petition is filed by them in public interest, with no personal motive or grudge against the respondents.

2. The petition relates to the production and screening of a Hindi movie, titled "Shikara", scheduled to be released today. The movie is stated to be relating the "painful" event of migration of Kashmiri Pandits from the Valley of Kashmir in 1990. The historical event is described by the petitioners themselves in para 3 of the writ petition which shall be quoted by us at appropriate place in this judgment.

3. The case of the petitioners, however, is that the movie, besides showing the painful migration of Kashmiri Pandits from Valley, is portraying shabby and cruel picture of the local population, especially of the particular community, which is not only against the actual facts and events, but also has the tendency of hurting the sentiments of all Kashmiris. In this regard, it is stated that the trailers of the movie, which are being screened on television and are also available on the internet, clearly point towards the biased and communal content of the movie. It is averred that whole of the local population, without any distinction between the civilians and militants, has been blamed for the unfortunate migration of Kashmir Pandits from the valley. Giving the transcription of some of the scenes / dialogues of the movie, it is alleged in the petition that these narrations and events depicted in the movie are concocted, and communal in nature and tenor. It is averred that the petitioners see a motive behind the false narration of facts in the movie and the timing of its release throughout the country on 07.02.2020. It is further stated in the petition that the atmosphere in the country is already polarized and emotionally charged. Some people who are ignorant of the events and have never visited Kashmir Valley, after watching the trailers of the movie on the internet have already started blaming particular community for mass migration of Kashmiri Pandits and have already issued a war cry against particular community. It is stated that in case the movie, with its false content, is allowed to be released, many Kashmir Muslims, more particularly students, who are studying in different States of India, are likely to be victimized by different vested interests and ignorant people. Furthermore, it is averred that post August 5, 2019, the security agencies have with hard efforts succeeded in maintaining calm in the Kashmir Valley, but all such efforts are likely to go in vain if the movie, with the concocted and fabricated content, is allowed to be released. According to the petitioners, the content of the movie is against the constitutional ethos.

4. The petitioners have prayed that the respondents may be directed: (i) to withhold the release of the movie till it is reviewed/scrutinized and censored by the appropriate authorities; (ii) to edit / remove the communal, inflammatory and frivolous content from the movie; (iii) to review the certificate issued with regard to the movie and censor the controversial and communal scenes / dialogues from it; and (iv) to ensure that all possible steps are

taken to prevent polarization and communalization of atmosphere in the country, particularly in Jammu and Kashmir. In the interim, the petitioners also

prayed that till final disposal of the writ petition, the respondents may be directed to withhold the release of the movie which is scheduled for release

today.

5. It may be mentioned here that the petition was presented before the Registry of the Court on 04.02.2020 and was listed before this Bench on

06.02.2020. This Bench, apart from directing issuance of notice to all the respondents for their response, asked Mr. Tahir Shamsi, learned ASGI, and

Mr. B. A. Dar, learned Sr. AAG, to take notice. Notice was also ordered to be issued to the learned Advocate General for his appearance in the

case, and the matter was ordered to be listed today.

6. The petition, accordingly, came up today. The learned Advocate General and the learned counsel for other respondents opted not to file any written

response but, instead, to argue the case on the pleas taken by the petitioners in the petition and on the basis of the settled law. The proposition

suggested at the Bar was accepted and the matter was heard.

7. The learned counsel for the petitioners, reiterating the pleas taken in the writ petition, as narrated above, submitted that, once the movie is screened,

there is likelihood of a backlash against particular community, particularly the students studying in other States of the country, and thereby it would be

prejudicial to the maintenance of public order in Jammu and Kashmir. He submitted that the Government is bound to take effective and adequate steps

to ensure maintenance of public order. The learned counsel, in an attempt to elucidate the meaning of the words "public order", referred to

Section 8(3) of the Jammu and Kashmir Public Safety Act, 1978, which enumerates the activities falling within the definition of the phrase "acting in

any manner prejudicial to the maintenance of public order". The learned counsel attempted to argue that the production of the movie and its

screening is likely to give rise to the circumstances leading to the elements, such as promote, propagate or attempt to create feelings of enmity or

hatred or disharmony on ground of religion and community, etc., qualifying the action to bring it within the meaning of the aforesaid phrase. He

submitted that the object of the movie is only to achieve the aforesaid objective within the meaning and connotation of the phrase given in sub-section

(3) of Section 8 of the aforesaid Act. Therefore, screening of the movie deserves to be put on hold. He further submitted that above being the motive

behind the production and screening of the film and its likely fall out, as becomes axiomatic from its trailers, a duty was cast on respondent no.3, the

Central Board of Film Certification, not to issue certificate for public exhibition of the movie, but the Board has failed to discharge its duties in

accordance with law. The learned counsel, in this connection, referred to Sections 5(B) and 5(C) of the Cinematograph Act, 1952.

8. On the other hand, the learned Advocate General submitted that the movie in question has been duly certified by the Central Board of Film

Certification, which is the appropriate forum to deal with any complaint against a movie, including those sought to be raised in the present writ petition.

He further submitted that it is not within the domain of the Courts to interfere in such matters. In support of his arguments, the learned Advocate

General cited and relied upon the judgments of the Supreme Court in *S. Rangarajan v. P. Jagjivan Ram*, 1989 (2) SCC 574, and *Viacom 18 Media (P)*

Ltd. v. Union of India, (2018) 1 SCC 761. As to the apprehension of the petitioners that certain scenes or dialogues in the movie are likely to cause

communal disharmony, the learned Advocate General submitted that it being the responsibility of the Government of India and of the Government of

the Union Territory of Jammu and Kashmir to ensure that public order is always and everywhere maintained, all precautionary measures are in place

and, if any further measures would be required after release of the movie, the same would be taken. Mr. Tahir Shamsi, learned ASGI, argued on the

same lines and cited two judgments of the Supreme Court in *Union of India v K. M. Shankarappa*, 2000 (8) Supreme 176 : (2001) 1 SCC 582, and *M/s*

Prakash Jha Productions v Union of India, 2011 (6) Supreme 109 : (2011) 8 SCC 372. Mr. Anil Bhan, learned counsel appearing for the film

producer(s), respondents 5 and 6, also advanced his arguments on similar lines and specifically relied upon the two judgments cited by the learned

Advocate General referred to above. He also produced a photocopy of the Certificate No.DIL/2/371/2019-MUM dated 05.09.2019 issued by the

Central Board of Film Certification for theatrical release of the movie in question.

9. This petition is essentially hinged by the petitioners on two assertions: first that the content of the movie is concocted, communally biased, far away

from truth and portraying the local population of Kashmir Valley, particular community, as shabby and cruel, and responsible for migration of Kashmiri

Pandits from the Valley in the year 1990; and second, that some of its scenes and dialogues, demonstratively exhibited in its trailers, are likely to cause

communal disharmony in the country resulting in backlash against particular community, especially the Kashmiri students studying in various States of the country.

10. A minute perusal of the contents of the writ petition reveals that the petitioners have not made any complaint, or raised any grievance or objection

against the exercise of power by the Board of Film Certification (the Board) or challenged the certificate issued by Board authorising the theatrical

release of the movie. They have not made even a whisper in the petition in this regard. They have simply sought the prayer to direct the respondents

to withhold the release of the movie on their above said two assertions and to review the certificate in question. The question is once there is no

grievance or objection raised against the power so exercised by the Board, nor is the certificate, issued by the Board in exercise of such power,

challenged on any ground, whatsoever, whether the relief sought in the petition can be granted and / or whether the Government of India or, for that

matter, any other Government or authority can act in a manner as would negate or impede the authorization flowing from the certificate so issued by

the Board.

11. We will come to the above question later. Let us first deal with the second assertion raised by the petitioners. According to them some of the

scenes and dialogues of the movie, as appear in its trailers available on the internet or shown on some TV channels etc., are likely to cause communal

disharmony in the country which in turn is likely to result in a backlash against particular community. This assertion, apart from being based on a mere

apprehension, apparently demonstrates the wrong notion and inept assumption of the petitioners about the capacity of the Government of India and of

the Government of the Union Territory of Jammu and Kashmir either to anticipate the fallout of any happening in the country or to deal with a

situation arising out of any such fallout. The apprehensions and the assumptions raised by the petitioners are unfounded, unnecessary and without any

substance. A writ petition cannot be entertained or maintained on mere

apprehensions and assumptions of any individual or group of individuals.

Nonetheless, the learned Advocate General submitted that all precautionary measures are in place to maintain public order at all times and

everywhere in the country, and that if any further measures would be required after release of the movie, the same would be taken. The assertion

raised is, therefore, uncalled for.

12. Coming to the first assertion of the petitioners that the content of the movie is concocted, communally biased, far away from truth and portraying

the local population of Kashmir Valley, as shabby and cruel, and responsible for migration of Kashmiri Pandits from the Valley in the year 1990, let it

be first examined as to what do the petitioners themselves have to say about the event in question. In this connection, para 3 of the writ petition may

be quoted hereunder. It reads thus:

“3. That in the year 1990 because of the inception of armed rebellion in Kashmir valley against the Union of India many unfortunate events took

place. One of the most disturbing, painful and heart wrenching incidents was the mass migration of Kashmiri Pandits from Kashmir valley. There are

many reasons which are attributable to the incidents leading to mass migration of Kashmiri Pandits and difference of opinion between different

stakeholders in this regard. However, one unequivocal view is that the local Kashmiri Muslims were deadly against the incidents leading to the mass

migration of Kashmiri Pandits from Kashmir valley. It can also be safely stated that the other Kashmiris, including Kashmiri Muslims and Sikhs, tried

their level best to prevent the Kashmiri Pandits from leaving the valley. However, due to the circumstances beyond the control of the local population,

the Kashmiri Pandits, who are the part and parcel of the Kashmiri society, left the valley with very few returning to their birth place thereafter. The

Government records also suggest that there was no role of Muslim population especially Kashmiri Muslims for the mass migration of Kashmiri Pandits

from valley.”

It is note worthy that the particulars of the petitioners given by them in the title of the writ petition, reveal that petitioner no.1, Iftikhar Misger, is of the

age of 50 years, petitioner no.2, Majid Hyderi, is of 39 years, and petitioner no.3, Irfan Hafiz Lone, is of the age of 40 years. That means in 1990, i.e.,

30 years back when the event took place, they, respectively, were of the age of

20 years, 9 years and 10 years. Petitioners 2 and 3, thus, had been minors then, yet, as is prominently depicted by their aforesaid averment, on account of the "painful" migration of Pandits from the Valley, they had indelibly felt the wrench in their hearts. If they feel that they have the right to express in writing what they had experienced and felt thirty years back as witnesses of the occurrence of an event, to reiterate, which they themselves describe as "painful" and "heart wrenching", it is not comprehensible how do they expect someone else, who claims to be the victim of the event, not to speak it out directly, indirectly or otherwise in a dramatised manner, and to shut his mouth. Furthermore, given this factual position, it is, again, not comprehensible how do the petitioners, claiming themselves to be social activists, expect this Court to gag the mouth of someone, who according to the petitioners themselves underwent the suffering, pain and agony, to prevent him from expressing in public such suffering, pain and agony in whatever manner he may choose. The petitioners' thinking and approach in this regard seem to be not bona fide. This Court is the custodian of the fundamental rights of the citizens and right to speak is one of them. The Court cannot put such a gag on any individual or group of individuals. The assertion made seems to be wholly contrary to what the petitioners themselves claim to believe in, and, in any case, does not warrant any action by this Court in exercise of its extra ordinary writ jurisdiction, under the garb of assumed public interest.

13. So far as the question, as mentioned in para 11 hereinabove, that arises in the instant case, it is reiterated that the petitioners have not raised any grievance against the statutory power exercised by the Board nor have they challenged the certificate issued by the Board in exercise of such power.

Therefore, there is no reason or legally justifiable ground raised to ask for the relief of the nature prayed for in this petition. It is not the case of the petitioners that the Board has not exercised its power or jurisdiction in accordance with the provisions of the Act and/or the Rules framed thereunder.

It is also not the case of the petitioners that the Board could not have issued the certificate in question or that they have failed to effectively exercise

its power. Mere reference to the provisions of Section 5B and 5C of Cinematograph Act, 1952 is inconsequential. It is a prayer made by the

petitioners in abstract. Notwithstanding that, it may be mentioned here that it

becomes axiomatic from the contents of the certificate in question, a photocopy whereof was brought on record by Mr. Anil Bhan, that the Board has certified the film fit for public exhibition after its examination by the members of the Examining Committee mentioned therein and on their recommendation. The certificate in question, therefore, has been issued in due observance of the provisions of the Act. In the facts and circumstances of the case, as mentioned hereinabove, we do not feel the necessity of referring to the provisions of the Act and discuss the mandates and powers thereunder. There being no reason or justification, muchless plausible and legally tenable, brought to the notice or made available to this Court, the prayers made in the petition cannot be granted.

14. As to the judgments cited at the Bar by the learned Advocate General and the learned ASGI, we are of the opinion that given the fact that in *S.*

Rangarajan v. P. Jagjivan Ram (supra) the certificate granted by the Board was challenged in the petition and in *Viacom 18 Media (P) Ltd. v. Union*

of India (supra) the ban orders imposed on exhibition of the film by two States were under challenge, strictly speaking these judgments are not

attracted to the facts attendant to the instant writ petition. Similarly, so far as the judgment of the Supreme Court in *Union of India v K. M.*

Shankarappa (supra) is concerned, therein the Government had sought to retain with itself the power to make such orders as it thought fit. Again, in

M/s Prakash Jha Productions v Union of India (supra), the writ petition had sought quashing of the decision taken by the State of Uttar Pradesh

suspending the screening of film *â??Aarakshanâ??*. These judgments, therefore, also do not strictly fit in the situation as in the instant case. Here, the

prayer for withholding the screening of the film and review of the certification by the Board is made in abstract, without there being a challenge

thrown to the exercise of power by the Board or to the certificate in question. Nonetheless, certain ratios laid down in these judgments are relevant.

These may be referred to hereunder:

15. In *S. Rangarajan v. P. Jagjivan Ram* (supra), the petitioner was critical about the manner in which reservation policy of the government had been

condemned, and the events and characters had been shown in the film *â??Ore Oru Gramathileâ??* (In Our Village) and the contention raised was

that they are depicted in a biased manner and reaction to the film in Tamil Nadu

was bound to be volatile. The Division Bench of the Madras High Court had revoked the U Certificate issued to the film. The Supreme Court reversed the judgment, holding that 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, and that open criticism of government policies and operations is not a ground for restricting expression. In

para 45 of the judgment, the Supreme Court observed as under:

45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interest. 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 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. In *Viacom 18 Media (P) Ltd. v. Union of India* (supra), notifications/orders issued by two of the Indian States, namely, the State of Gujarat and the State of Rajasthan, prohibiting the exhibition of the film, *Padmavat*, on the ground of public interest and to maintain the law and order, were challenged. In para 16 of the judgment, the Supreme Court laid down as under:

16. It has to be borne in mind, expression of an idea by any one through the medium of cinema which is a public medium has its own status under the Constitution and the statute. There is a Censor Board under the Act which allows grant of certificate for screening of the movie. As we scan the language of the Act and the Guidelines framed thereunder, it prohibits use and presentation of visuals or words contemptuous of racial, religious or other grounds. Be that as it may. As advised at present, once the certificate has

been issued, there is prima facie a presumption that the authority concerned has taken into account all the Guidelines including public order.â??

Holding thus, the Supreme Court stayed the operation of the ban orders.

17. In *Union of India v K. M. Shankarappa* (supra), vires of the certain provisions of the Cinematograph Act were challenged consequent upon which

portions of Section 6(1) were held to be unconstitutional and struck down. Under Section 6(1), the Central Government had reserved with itself certain

power to call for the record of any proceeding in relation to any film pending before the Board or the Tribunal constituted under the said Act, and

make such order in relation thereto as it would think fit etc. The Supreme Court observed that in effect what the Government is seeking to do is to

exercise power of review or revision over the decisions of the Board or the Tribunal. It was contended before the Supreme Court that it was

necessary to retain such a power because it had been found that on certain occasions, after the film was cleared by the Board or by the Tribunal,

there was public resentment towards the film and law and order situation arose. In this connection, the Supreme Court in para 8 of the judgment

observed and held as under:

â??8. We fail to understand the apprehension expressed by the learned counsel that there may be a law and order situation. Once an expert body has

considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the

State Government concerned to see that law and order is maintained. In any democratic society there are bound to be divergent views. Merely

because a small section of the society has a different view, from that as taken by the Tribunal, and choose to express their views by unlawful means

would be no ground for the executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that

law and order is maintained by taking appropriate actions against persons who choose to breach the law.â??

18. In *M/s Prakash Jha Productions v Union of India* as mentioned above, the producers of the film â??Aarakshanâ?? had filed a petition against the

decision of the State of U. P. to suspend screening of the film before it was publicly exhibited in theatre halls. The stand of the State Government was

that it had appointed a High Level Committee which, after seeing the film, had

opined that if and when the film was screened, there was likelihood of breach of peace and also breach of law and order; therefore, the decision of suspending the screening of the film was taken. The stand taken did not

find favour with the Supreme Court and the writ petition was partly allowed. In paras 26 and 27 of the judgment, the Supreme Court held as under:

26. In the present case, the Examining Committee of the Board had seen the film along with the experts and only after all the members of the

Committee as also the two experts gave positive views on the screening of the film, thereafter only the certificate was granted. Therefore, since the

expert body has already found that the aforesaid film could be screened all over the country, we find the opinion of the High Level Committee for

deletion of some of the scenes/words from the film amounted to exercising power of pre-censorship, which power is not available either to any high-

level expert committee of the State or to the State Government. It appears that the State government through the High Level Committee sought to sit

over and override the decision of the Board by proposing deletion of some portion of the film, which power is not vested at all with the State.

27. It is for the State to maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially. Once the

Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the

present case. It is the responsibility of the State Government to maintain law and order.

19. The principles of law laid down in the aforesaid judgments set the controversy sought to be raised in this petition at naught and nothing remains res

intergra. Yet, if the petitioners had any legally justifiable grievance or complaint against the film in question, the appropriate forum was the Tribunal

constituted under the relevant provisions of the Cinematograph Act.

20. In view of the above reasons, we do not find any merit or public interest involved in this petition and, as such, same shall stand dismissed,

alongwith the connected CM.

21. We, however, make no order as to costs.