

(1997) 12 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 1733 of 1997

Mirabai Films Pvt. Ltd.

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 23-12-1997

Acts Referred:

Cinematograph Act, 1952 — Section 5
Cinematograph Certification Rules, 1983 — Rule 22, 24(1)

Citation : AIR 1998 Bom 143 : (1998) 1 ALLMR 548 : (1998) 2 BomCR 281 : (1998) 1 BOMLR 736

Hon'ble Judges : B.P. Saraf, J; A.Y. Sakhare, J

Bench : Division Bench

Advocate : Virendra V. Tulzapurkar, Virag V. Tulzapurkar, A. Desai and Ms. C. Rana, instructed by Shah, Desai Doijode and Phatarphekar, for the Appellant; R.V. Desai and Anoop V. Mohta, for the Respondent

Judgement

B.P. Saraf, J.—The petitioners are aggrieved by the letters of the Regional Officer, Central Board of Film Certification, Mumbai dated 13th October 1997 and 17th October 1977 (Exhs. "E", "F and "G" to the writ petition) directing them to delete certain visuals from the film "Kamsutra - A Tale of Love", dubbed in Hindi, Tamil and Telugu. These directions, according to the petitioners, are illegal and contrary to the existing guidelines of the Central Government. The contention of the petitioners is that the respondents have no power to further censor the visuals of the dubbed version of an already certified film. They seek a direction to respondents not to insist on deletion of any part of the visuals in the dubbed version.

2. The materials facts of the case, briefly stated, are as follows :

The petitioner Company, which is engaged in the business of film production and direction, produced a full length Indian feature film titled as "Kamsutra - A Tale of Love", originally in English language, with an intention to dub the same in Hindi and other regional languages. The petitioners applied to the Central Board

of Film Certification, Mumbai on 31st October, 1996 for certification of the said film for public exhibition. The film was examined by the Examining Committee and after the suggested cuts were accepted by the petitioners, the respondent No. 2 - Central Board of Film Certification informed the petitioners on 11th November 1996 that the film had been referred to Revising Committee under Rule 24(1) of the Cinematograph Certification Rules 1983. The Revising Committee directed certain further cuts. The petitioners were informed of the same by letter dated 19th November 1996. The petitioners preferred an appeal to the Appellate Tribunal against the decision of the Revising Committee on 25th November 1996. The Appellate Tribunal, vide its order dated 10th December 1996, directed that after certain cuts, deletions the film be granted an "A" Certificate.

2-A. Thereafter, on 9th April 1997, the respondent No. 2 - Central Board of Film Certification filed an application to the Appellate Tribunal for review of its above order dated 10th December 1996 on the ground that the film was going to be submitted to the Board in its Hindi, Tamil and Telugu versions for certification as a result of which the impact of the film was going to be much more far-reaching than the English version. The petitioners challenged the review application before this Court by filing writ petition which was numbered as Writ Petition No. 608 of 1997. Before this Court, a statement was made on behalf of the Union of India and the Central Board of Film Certification that the review application filed before the Appellate Tribunal would not be pressed by them. In view of the above statement, the writ petition became infructuous and it was disposed of accordingly. However, in the order, it was recorded by this Court that it would be open to the respondents to invoke the revisional powers of the Central Government u/s 6 of the Cinematograph Act, 1952 ("Act"). The respondent No. 2 - Central Board of Film Certification thereafter moved the Central Government for revision u/s 6 of the Act and the Central Government by its order dated 29th August 1997 directed certain cuts which were accepted by the petitioners. The English version of the film was accordingly granted "A" Certificate on 9th October 1997. The petitioners thereafter submitted the dubbed versions of the film in Hindi, Tamil and Telugu to the respondent No. 2 seeking "A" Certificate for the same. While doing so, in terms of the guidelines issued by the Central Government regarding the procedure to be followed for certification of dubbed versions of already certified films, the petitioners opted that the dubbed versions should not be treated as a fresh film and should be subjected to the special procedure laid down therein. Accordingly, the petitioners submitted necessary affidavits and documents in accordance with the said guidelines. On receipt of the application, the respondent No. 2 again required the viewing of the film by the Examining Committee and later by its letter dated 13th October 1997 directed certain cuts in the visuals and dialogues of Hindi version. By two other letters dated 17th October 1997, certain cuts in the visuals and dialogues of Tamil and Telugu versions were directed to be made. So far as the cuts in the dialogues are concerned, the petitioners complied with the directions of the

respondent No. 2 and there is no dispute in that regard. The petitioners are aggrieved by the directions of the respondent No. 2 for deletion of certain portions of the visuals in the dubbed film because according to them there cannot be any further censorship in the visuals of the dubbed film if they are exactly same as the visuals of the original version. There is no dispute in this case about the fact that the visuals in the dubbed films are exactly the same as in the original certified version. Aggrieved by the directions of the respondent No. 2 in so far as it pertains to the cuts in the visuals in the dubbed film, the petitioners are before us by way of this writ petition.

3. The case of the petitioners is that the respondents have no power to suggest or direct any cuts in the visuals in a dubbed version once the original film has been certified. In other words, according to the petitioners, the respondents have no power to further censor the visuals in a dubbed version of an already certified film. In support of this contention, the petitioners rely on the guidelines issued by the Ministry of Information and Broadcasting of the Union of India by D.O. letter 10th June 1993 whereby special procedure for certification of dubbed films has been laid down. By the said guidelines, an applicant in respect of a film claimed to be dubbed version has been given an option to have his film treated as a fresh film or his film subjected to the special procedure mentioned therein. In the present case, the petitioners exercised the second option and wanted the dubbed films to be subjected to the special procedure mentioned in the guidelines for certification of the same. The case of the petitioners is that under the procedure laid down by the Government of India, it is clearly stipulated that once the Examining Committee by majority is satisfied that the dubbed version visuals are exactly the same as the visuals of the original certified version, there should not be another censorship in respect of visuals of the film except for the title etc. mentioned in sub-Clauses (a), (b) and (c) of Clause (i) of para 2 of the guidelines. Clauses (a), (b) and (c) of Clause (i) refer to the main title of the picture and credit title, name plates, boards, etc. appearing in the visuals of the film converted to the language in which the film is being dubbed. The case of the petitioners is that in view of the guidelines, the direction of the respondent No. 2 to the petitioners to make further cuts in the visuals of the dubbed films are illegal.

4. When the matter came up for admission, the respondent wanted to file an affidavit. The learned Counsel for the parties were, however, agreed that this writ petition may be finally disposed of at the admission stage itself. Time was granted as prayed for. Accordingly, on 21st November, 1997, an affidavit was filed by Ms. Sanjeevane Kuty, Regional Officer of the Central Board of Film Certification, Mumbai, on behalf of both Union of India and the respondent No. 2. In para 14 of the said affidavit, referring to the guidelines for certification of dubbed films issued by the Government of India, it was stated that the said guidelines were executive instructions which were to be followed on a trial basis for a period of six months. It was further stated that after six months, the procedure was to be reviewed and appropriate changes were to be made. It was

also pointed out that the question of incorporating those executive instructions in the Cinematograph Certification Rule's was under consideration of the Central Government. It was further stated that even if they were so incorporated, they could not be applied retrospectively in case of the film of the petitioners. On receipt of the above affidavit, a further affidavit was filed on behalf of the petitioners by one Mr. Madhav Chhabria, wherein reference was made to the statement of the Minister for Information and Broadcasting to the effect that instructions had already been issued that visuals of dubbed films need not be recertified and only dialogues would have to be examined by Examining Committee. In support of the above contention, a copy of the communication dated 28th July 1997 from Mr. Rachu Menon, Joint Secretary, Government of India, Ministry of Information and Broadcasting addressed to Mr. K.C. Dossani, President, Film Federation of India, Mumbai and various other documents were annexed to the affidavit. One of the documents so annexed is a copy of the record of discussion of the meeting of the Minister of Information and Broadcasting with the representatives of film industry held on 15th July, 1997. In para 11 of the said record, it is stated as follows :---

"Commenting on the procedure of dubbed films, IBM mentioned that instructions had already been issued that visuals need not be re-certified. However, the dialogues would have to be examined by the Examining Committees."

A copy of the recommendations of the High Power Committee and action taken thereon was also submitted by the petitioners. In the said action report, regarding the censorship of dubbed films, in reply to the question that dubbed films should not be treated as new films and cuts should not be made therein, it is stated as follows :

"In regard to censorship of films, the C.B.F.C. (Central Board of Film Certification) does not insist on each and every dubbed film being treated as fresh film. The procedure is simple and reasonable. Part 11 of the minutes of the meeting held with Hon"ble Minister on 15-7-97 are relevant in this regard."

In paragraph 11 of the record of discussions of the meeting taken by the Minister of Information and Broadcasting, with the representatives of the film industry held on 15th July, 1997, it is clearly recorded that commenting on the procedure of dubbed films, I.B.M. (Information and Broadcasting Minister) mentioned -

"..... instructions had already been issued that visuals need not be recertified. However, the dialogues would have to be examined by the Examining Committee."

We asked the learned Counsel for the respondents to tell us as to how on the face of these documents and the statement of the Minister concerned, the respondents could say that the guidelines /executive instructions issued by the Government in 1993 were applicable only for a period of six months and were no more in force. We were told by the learned Counsel for the respondents that the respondent No. 2 was not aware of the above documents furnished by the

petitioners and would like to take instructions and file an affidavit in that regard. He prayed for time for that purpose. Time was granted accordingly. On 16th December 1997 a further affidavit was filed on behalf of the respondents by Ms. Sanjeevanee Kutty, the Regional Officer of the Central Board of Film Certification wherein she explained that the documents referred to and relied upon by the petitioners were not in the possession of the Board when her earlier affidavit was filed. She, however, stated that the said documents had been confirmed by the Ministry. It was therefore contended that since the Board was under the administration purview of the Ministry, it would not like to take a stand contrary to that of the ministry on that point. The material portion of the affidavit reads as follows;

"As per the oral directions of this Hon"ble Court on 12-12-97, this short affidavit is being filed on behalf of respondent No. 2 on the point of the documents tendered by the petitioners on 12-12-97.

The petitioners have produced the following documents during the hearing on 12-12-97 ;

- i) Record of discussions of the meeting held by the Hon"ble Minister for Information and Broadcasting with the representatives of the film industry on 15th July 1997.
- ii) D.O. letter No. 103/1/96-F(1) Pt dated 28-8-1997 from the Ministry, addressed to Shri K.G. Dossani, President, FFI.

The documents referred to above were not in the possession of the Board when our affidavit was filed. The Ministry has now confirmed these documents. Since the Board is under the administrative purview of the Ministry, it would not like to take a stand contrary to that of the Ministry on this point."

5. It is clear from the above affidavit that the Central Government has issued directions in the matter of certification of dubbed films to the authority competent to grant certificates under the Cinematograph Act to the effect that in case of dubbed films, visuals need not be re-certified, only dialogues would have to be examined by the Committee. These directions are reiterated and confirmed in the record of discussion in the meeting held by the Minister for Information and Broadcasting with the representatives of the film industry on 15th July 1997 and the D.O. letter dated 15th July 1997 of the Ministry to the President, Film Federation of India. The respondents are justified in their stance that they do not want to take a stand contrary to that of the Ministry which has said in clear terms that in case of dubbed films, the visuals need not be re-certified. We pointed out to the learned Counsel for the respondents that in view of their above stance, nothing survived in this writ petition.

6. The learned Counsel for the respondent No. 2, however, submitted that in view of the above report of the Examining Committee, appropriate directions may be given by this Court to the respondents not to recensor visuals of the dubbed

films. In the alternative, he prayed for some time to enable them to modify the impugned letters after going through all formalities. Time was allowed as prayed for. When the matter was taken up yesterday, we were, told by the learned Counsel for the respondents that the Examining Committee appointed by the respondent No. 2 did not agree to certify the dubbed films without the cuts in the visuals suggested by them despite the above directions of the Central Government. We are told that the members of the Examining Committee were of the opinion that the executive instructions of the Ministry with its blanket prohibition on cuts in the visuals in dubbed films restricted them from exercising their free opinion. The members of the Examining Committee, therefore, decided to act in accordance with their conscience and refused to agree to the certification of the dubbed version of the films without the cuts in the visuals as suggested by them. We asked the learned Counsel for the respondents as to how the respondent No. 2 can insist on the cuts in the visuals on the basis of the opinion of the Examining Committee despite clear directions/guidelines issued by the Central Government to the effect that the visuals of the dubbed films need not be re-certified and the Examining Committee had only to examine the dialogues. We also asked the learned Counsel to tell us as to how the Examining Committee can examine the visuals of a dubbed films when the scope and ambit of its power is confined to the re-examination of the dialogues. In reply, the learned Counsel fairly stated that the directions of the Ministry of information and Broadcasting were binding in the matter of certification of dubbed films both on the respondent No. 2 and the Examining Committee and that he had intimated the opinion of the Examining Committee and the stance taken by them to this Court only with a view to highlighting the dilemma faced by the respondent No. 2.

7. We appreciate the fair stance of the respondent No. 2 - the Central Board of Film Certification that the procedure laid by the Central Government for certification of the dubbed versions of certified films is binding and it is not open to the Examining Committee to deviate from the same and insist on censorship of the visuals of the dubbed films in the instant case contrary to the said guidelines. We have perused the minutes of the meeting of the Examining Committee held on 19-12-1997. It appears that the members were of the opinion that they were bound by the provisions of the Act and the Rules and not by the executive instructions of the Central Government which direct that the dubbed versions be passed without any visual cuts. The stance of the Examining Committee is clear from paragraphs 6 and 7 of the proceedings which read as follows:

"6. All members of the Committee felt that the executive instructions, with its blanket prohibition on visual cuts, restrict them from exercising their free opinion. The members unanimously declared that since they have found some visuals in the film objectionable, they cannot act against their conscience and close their eyes to these violations.

7. The Committee felt that these executive instructions cannot supersede the statutory provisions of the Act and Rules which they are duty-bound to follow and they concluded that these instructions, until they are incorporated in the Act and Rules, cannot be binding on them as members of the Examining Committee."

8. We have given our careful consideration to the stand taken by the Examining Committee. However, on perusal of the provisions of the Act and Cinematograph (Certification) Rules, 1983, we are of the clear opinion that the Examining Committee is not correct in law in refusing to follow the guidelines issued by the Central Government. Section 5-B of the Act clearly empowers the Central Government to issue such directions as it may think fit setting out the principles to guide authority competent to grant certificate under the Act in sanctioning film for public exhibition. In June 1993, the Central Government laid down the procedure for certification of the dubbed versions of certified films and issued directions to the concerned authorities including the Central Board of Film Certification to follow the same. These directions were made effective from 1-7-1993. As per the procedure laid down by the Central Government for certification of dubbed films, an applicant in respect of dubbed film has been given option either to his film being treated as fresh film or to his film subjected to the special procedure mentioned therein. Under the special procedure, in terms of paragraph 2(i), the applicant has to give an affidavit along with his application declaring that he has not made any alterations or additions or subtraction in the visuals of the film except (a) the main title of the picture and credit title, (b) name plates, boards etc. appearing in the visuals of the film converted to the language in which the film is being dubbed and (c) comedy sequences not relevant to the region of the language in which the film is being dubbed, having been deleted or reduced; that otherwise the dubbed version is frame to frame the same as the original version; and that the dialogues are a literal translation from the original version and there is no change or addition or deviation. In paragraph 5 of the procedure, it is clearly stated that once the Examining Committee is satisfied that the dubbed versions visuals are exactly the same as the visuals of the original certified version, there should not be any censorship of the visuals in the film less (a), (b) and (c) of Clause (i) of paragraph 2 thereof. It is categorically stated in the said paragraph-

"The Examining Committee shall confine itself to censorship of the audio tracks (dialogue, lyrics etc. in terms of the guidelines issued by the Central Government for certification of film."

9. In the first affidavit filed by the Regional Officer of the Central Board of Certification, a stand was sought to be taken that the guidelines were executive instructions which were valid for the period of six months only. It was also stated that the question of incorporating those executive instructions in the Cinematograph Certification Rules was under consideration of the Central Government. However, the petitioners later came up with the relevant documents to show that the said guidelines/ directions were still applicable. In

support of the contention, the petitioners referred to the statement of the Minister of Information and Broadcasting that instructions had already been issued that the visuals need not be re-certified and that only dialogues can be examined by the Examining Committee. In the second affidavit filed by the Regional Officer of the respondent No. 2, it was conceded that such directions had been issued by the Central Government and that they were inoperative. These directions have been communicated to the Central Board of Film Certification, respondent No. 2 herein, as also to the film producers and their Associations. There is no dispute now on that count. What the Examining Committee wants to say is that these directions are not binding on them. We do not find any force in this stand of the Examining Committee because Rule 22 of the Cinematograph (Certification) Rules, which, inter-alia, deals with the powers of the Examining Committee, clearly provides that the Examining Committee shall examine the film having regard to the principles for guidance in certifying the film specified in section 5-B and the guidelines issued by the Central Government u/s 58(2). Under sub-rule (13) of Rule 22, the examining officer has been made personally responsible to examine whether each and every guideline issued by Government has been followed and to bring any lapse of deviation to the notice of the Chairman. Under sub-Rule (6) of Rule 24, it is provided that the Revising Committee shall also examine the film having regard, inter-alia, to the guidelines issued by the Government u/s 5(3)(2).

10. On the face of these provisions of the Act and the Rules, it is difficult to accept the stand of the Examining Committee in the instant case that they are not bound by the directions given by the Central Government. The directions issued by the Central Government referred to above, in effect, contain principles for guidance of the authority competent to grant certificate in case of dubbed films. These directions are binding on all the authorities dealing with the certification of the dubbed films. The contention of the Examining Committee that they can re-examine the visuals despite clear directions of the Central Government and recensor the visuals of the dubbed films, is on the face of it, untenable in law. The only power of the Examining Committee in regard to visuals in case of dubbed films is to satisfy itself that the dubbed versions visuals are exactly the same as the visuals of the original certified film. Once that is so, the Examining Committee has no power to censor the visuals of the dubbed film. It has to confine itself to censorship of the audio tracks (dialogue, lyrics etc.) in terms of the guidelines issued by the Central Government for certification of the dubbed films. In the instant case, the petitioners having complied with the directions of the respondent No. 2 in regard to deletion of dialogues, words etc., the Examining Committee is not justified in law in insisting on the deletion of the visuals in dubbed films. The stand of the respondent No. 2 that in view of the directions of the Central Government, they have no power to recensor the visuals in the dubbed films and/or direct any further cuts in the visuals is correct and in accordance with the law.

11. That being so, we are of the clear opinion that the directions of the

respondent No. 2 contained in the impugned letters dated 13th October 1997 and 17th October 1997 asking the petitioners to make certain cuts in the visuals in the Hindi, Tamil and Telugu versions of the certified film are not tenable in law. The petitioners are entitled to get necessary certificates if they have complied with other directions contained therein. The respondent No. 2 is, therefore, directed to issue necessary certificates to the petitioners for the dubbed films in question. This writ petition is allowed accordingly.

12. Mr. R.V. Desai, the learned Counsel for the respondents, prays for six weeks" time to do the needful. In view of the intervening vacation, six weeks" time is allowed as prayed for. Petition is disposed of in the above terms with no order as to costs.

13. Certified copy expedited.

14. Petition dismissed.