

(1988) 04 MAD CK 0045

In the Madras High Court

Case No : W.A. No's. 469 and 488 of 1988

P. Jagajeevan Ram and etc.

APPELLANT

Vs

Govt. of India and Others

RESPONDENT

Date of Decision : 29-04-1988

Acts Referred:

Cinematograph Act, 1952 — Section 2, 3(1), 4(2), 5A, 5B
Cinematograph Certification Rules, 1983 — Rule 22(9), 24(1), 24(8), 32(1), 32(2)
Constitution of India, 1950 — Article 15(4), 16(4), 226
Prevention of Insults to National Honour Act, 1971 — Section 2

Citation : AIR 1989 Mad 149

Hon'ble Judges : Sathiadev, J;Bellie, J

Bench : Division Bench

Advocate : V. Anantharaju and C. Ramakrishnan, for the Appellant; S. Govind Swaminathan, for V. Nataraj, B. Giridhara Rao, C.A. Sundram and C. Krishnan, Addl. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Sathiadev, J.—These two writ appeals are preferred against the common judgment of the Hon'ble Mr. Justice Mohan dt. 15-2-1988 rendered in W.P. Not 1166, 1181 and 1229 of 1988. W.A. No. 469 of 1988 is filed against W.P. No. 1166 of 1988, while W.A. No. 488 of 1988 is filed against W.P. No. 1181 of 1988.

2. W.P.No. 1166 of 1988 was filed by Mr. P. Jagajeevanram, a journalist, who publishes an English Fortnightly "why not" and Tamil fortnightly "Sathiyavetkai", and another called "Cinema Studio". He is an Industrialist manufacturing T. V. sets with brand name "Jeevan". He belongs to Scheduled Caste community. He has preferred the Writ Petition as a public interest litigation for issue of a Writ of Prohibition directing the respondents 1 to 4 to prohibit the fifth respondent from exhibiting, the Tamil film "Ore Oru Gramathilae" throughout this country for its public exhibition, and to pass such further or other orders or directions in the nature of any writ as may be deemed fit and proper in the circumstances of the case.

3. W.P. No. 1181 of 1988 was filed by Dr. M. Deivanayagam, President of the Research Movement of Dravidanism, for issue of a Writ of Mandamus or any other appropriate writ, directing respondents 1 to 3 therein to revoke the Cinematograph Certification granted to the fourth respondent.

4. On these writ petitions along with another coming up for admission, the learned Judge in admission stage dismissed them, by holding that the movie in question certainly portrays the life and society with some of its foibles, and that does not mean that the certification requires to be withdrawn or it can be prohibited. Aggrieved with the rejection of the writ petitions "in limine", two of the petitioners have preferred these two writ appeals.

5. It is claimed that the dismissal of the writ petitions in this nature "in limine" was not justified on several grounds of which some of them are:

"They involve questions of law, procedural flaws, if the film is exhibited, it will disturb public peace and tranquillity in this State; it is a calculated attempt to denigrate the Constitutional provisions on Reservation; it advocates commission of offences like forgery, conspiracy, cheating by impersonation with impunity; it is impregnated with dangerous tendencies and practices to be adopted by Forward Community, it degrades Independent India and praises British Rule. Dr. Ambedkar, the architect of the Constitution is character assassinated; the mala fides alleged ought to have been gone into, etc.,

6. It is emphasized that, when nearly 100 writ petitions are admitted in a day involving minor points; a matter of this nature in which several lakhs of depressed people, who have not attained any equality whatsoever in spite of four decades of Independence, having come before Court expressing their anguish about themselves being denigrated in a medium of this nature; as repeatedly held by the Supreme Court, the writ petitions ought to have been admitted and the claims made therein investigated thereupon. It is common knowledge that public agitations have been going on, and several persons have courted arrest, against screening of this film and when the producer had taken two months to announce the release of the picture after certification, this was not such an urgent matter in which the Court should have hurriedly disposed of the matter, as if the producer would be prejudiced by the matter being considered by Court. It is not as if the release of the picture could not brook a short delay, till the matter is considered by Court on merits. Lastly, without even seeing the film, a conclusion could not have been arrived at that the movie in question certainly portrays the life and society with some of its foibles and, therefore, the appellants claim that they have to file these Writ Appeals.

7. In the supporting affidavit in W.P. No. 1166 of 1988, it is stated as follows : --

The Tamil film "Ore Oru Gramathilae" is entirely a caricature and character assassination of the great leader of this Nation Dr. B. R. Ambedkar and it is the criticism of the Government's Reservation Policy for Backward Classes including Scheduled Castes and Scheduled Tribes. As fifth respondent is Brahmin, he has

audaciously attacked the Government's well-founded policy of reservation in favour of Backward Classes in employment as well as educational fields. In more than one respect, it contravenes the guidelines prescribed u/s 5B of Cinematograph Act, 1952 (Act 37 of 1952) (hereinafter called the "Act"). Fourth respondent did not certify it for public exhibition. Third respondent also did not grant the certificate. "But fifth respondent being a Brahmin, influenced the higher ups in the department of respondents 1 and 2 as well as through person occupying the higher posts in New Delhi and has obtained a "U" Certificate for public exhibition". After referring to the story in the film, it is claimed that the entire stretch of the Court scenes and dialogues thereon are objectionable to the Act. It advocates the theory of social justice to the Brahmin Community, in that, a Brahmin shall convert himself into Scheduled Caste and avail of the reservation benefits of the Government, and that the Government remains silent without punishing them. The guarantee given under Article 17 of the Constitution had been overlooked, and untouchability is professed. The reservation policy is the outcome of social reformation undergone by this Nation, and which necessitated the introduction of Articles 14 to 17, 25, 46, 335 and 338 in the Constitution. After referring to the decision in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, upholding that the Government's Policy of reservation to Backward Classes, Scheduled Castes and Tribes was justified legally and Constitutionally, it is stated that the fifth respondent cannot advocate a grievance theory of social justice against the Brahmin community, a community alien to this country. "The said community is not a community of this nation, and they are the tribats of MidEurope migrated to this country. As such the film is to be banned from it's public exhibition in this country. The film is a mastermind of fifth respondent to commit character assassination of Dr. B. R. Ambedkar, and the heroine of the film claims that she does not like Dr. B. R. Ambedkar as he fought only for the poor but not for the par. There are many scenes of vulgarity to insult the people of this country belonging to Backward Classes, Scheduled Castes and Scheduled Tribes, and the whole film professes untouchability by issuing a certificate, all the respondents having violated the Constitutional provisions, it resulted in petitions being sent by Several organisations of Scheduled Castes and Scheduled Tribes to the President of India, the Prime Minister of India, The Union Ministry for Home Affairs, etc. The film was scheduled to be released on 5-2-1988, and now it is postponed to 19-2-1988. Hence, pending disposal of the writ petition, an order of injunction requires to be issued preventing the relea.se of the film.

8. Petitioner in W. P. No. 1181 of 1988 states that on coming to know that this film is to be screened, he managed to see the film when it was screened in the theatre of South Indian Film Chamber of Commerce, and he was shocked to find that it contains objectionable "scenes and dialogues, which would have a tendency as to incite the commission of offences, create disharmony and ill-feelings between various classes of people and bring about public disorder. After

referring to the story in the film, it is claimed that it ridicules and insults confession made in Christianity and is an insult to the religious feelings of a class of citizens in India. Petitioner understands that the Revising Committee declined to recommend the film for certification, and the Regional Board declined to recommend it on the ground that the various portions of the film are against public order besides being likely to incite commission of offence, etc. It appears that Central Government intervened in the matter, and had given directions to the Board to certify the film; and as the Board now certified it for public exhibition, he has filed the writ petition. According to him, no right minded citizen would be satisfied on seeing the film, as it offends Section 5B of the Act.

9. Fifth respondent in filing a counter-affidavit in C.M.P. No. 4343 of 1988 in W.A. No. 469 of 1988 states as follows : -

After the writ petition was dismissed on 15-2-1988, the writ petitioner had not chosen to prefer the appeal till three days before the proposed release of the film and, therefore, the interim injunction cannot be claimed pending disposal of the appeal. The film does not mean or contain any material disrespectful to any religion or community or sect, or an insult to the memory of great leaders and founding fathers of this country. No disrespect has been shown to Dr. Ambedkar, but on the contrary, laudatory remarks had been made about him. The thrust of the film is to achieve national integration and unity. It does not advocate untouchability. It strives to establish oneness and unity of Indians. It does not propagate poisonous ideas against Backward" community. He had produced 10 films on different themes. The certification for. Universal exhibition was granted by the Board after duly considering the film in keeping with Section 5B of the Act and guidelines formulated thereunder. When a body of experts having come to a conclusion, this Court would not sit in judgment over such an opinion. As held in K.A. Abbas Vs. The Union of India (UOI) and Another, , the film, as a whole, should be considered, and parts cannot" be taken in isolation. The film was taken to advocate Reservation Policy based" on economic consideration rather than communal consideration; and such a message cannot be said to be ultra vires of Constitution of India. The Chief Minister of this State was in favour of such a policy, but it did not fructify. It does not hurt the sentiments of Backward Classes, Scheduled Castes and Scheduled Tribes of the whole country. Having produced the film at enormous cost, and when the learned Judge having seen no reason to interfere and dismissed the petition, the writ petitioner had approached this Court after more than four weeks. Hence, the balance of convenience is against the grant of interim injunction.

10. Respondents 1 to 4 in their counter-affidavit in both the writ appeals would state as follows : --

The writ appeal is not maintainable as proper parties have not been added. It is the Secretary to Government, Ministry of Human Resources Development and Department of Culture, New Delhi who are the necessary parties. It was after due examination by the Examining Committee and Revising Committee, the

respondents have issued the Censorship certificate dt. 7-12-1987 as it was in accordance with the Cinematograph (Certification) Rules 1983 and the Guidelines laid down under the Act. The writ appeals are premature. The film as a whole has to be taken note of and not a particular scene or dialogue for a fuller appraisal of the facts of the case. The decision for refusal based on the recommendation of the Examining Committee was communicated to fifth respondent on 30-10-1987 as contemplated in Rule 23 and an opportunity was given to him to represent his views. He requested for the film to be referred to a Revising Committee in terms of Rule 24(1), and on 2-11-1987, the film was examined by the Revising Committee consisting of 9 members out of which three were Board members, and six were panel members. By a majority, the committee recommended issue of "U" certificate, subject to deletion of certain portions of the film. Having regard to the fact that the Examining Committee had recommended refusal of certificate, and such a view having been expressed by the dissenting member in the Revising Committee, the Chairman disagreed with the majority opinion, and referred it to the Second Revising Committee which saw the film on 25-11-1987 and decided by majority that the film be granted "U" Certificate subject to deletion of some portions which contravene the guidelines 2(iv) (ix) and (x). Under the proviso to Rule 24(12), such a decision being final, a certificate was granted by 4th respondent on 7-12-1987 after examining the excisions made in the film. Board had taken the due precaution as provided under the guidelines and Rules made under the Act. Therefore, the writ appeals are liable to be dismissed.

Respondents 1 to 4 take up the point that proper parties have not been impleaded and in their absence these writ petitions are liable to be dismissed. Mr. C. Krishnan, learned counsel for respondents 1 to 4 submits that in view of the decision in *Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another*, Union of India is a necessary party. In that case, a servant of Union of India questioned the order of removal from service and when the order of the Court would have to be enforced against the Union of India, it was held that impleading of General Manager or any other authority acting in the Railway Administration is as much as a servant of the Union of India as that of the delinquent who had come before court, and that as the Union of India carries administration through different servants, it is a necessary party to the proceedings. These writ petitions are filed as public interest litigation and as observed in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, a public interest litigation is not in the nature of an "adversary litigation" and a member of the public acting "bona fide" can move the High Court for enforcement of a fundamental right. Therefore no exception could be taken, when the writ petitions had been filed by impleading the Government of India as the 1st respondent represented by the Secretary of Ministry of Home Affairs. It is not possible for a citizen who is nearly 1,500 miles away, to know about the precise designations of the officers and departments. No exception is taken to the description of respondents 3 and 4. On behalf of respondents 3 and 4 the

Standing Counsel for the Central Government having appeared; he could always furnish to the petitioners as to which are the Departments which deal with the concerned matters, and thereupon the cause title could be corrected. In fact he had done it already. According to him, the correct department is Department of Culture, and to implead it C.M.P. No. 5713/88 has been filed and ordered. As for Ministry of Human Resources..." Development is concerned, it is not there. Yet it is of no consequence. Therefore this point about the non maintainability of the writ petitions for failure to implead the proper party no longer survives.

The next point is about the maintainability of the writ petitions. It is claimed that the petitioners are not concerned with the enforcement of the provisions of the Act, and when the picture had not been publicly exhibited, they cannot file these writ petitions. W.P. No. 1166/88 having been filed for the issue of writ of prohibition, and how that the film has been certified at this distance of time, the relief asked for cannot be granted.

These writ petitions have been filed as public interest litigations. In more than one decision, the Supreme Court has held that when the fundamental right of a citizen is violated, he can always institute writ petition, as a public interest litigation. Even in the latest decision reported in Ramesh Dalal Vs. Union of India (UOI) and Others, about showing the serial "Tamas" in Television, in Para 22 (of S.V.L. Rs.) : (Para 22 AIR) it was held-

".....We however accept the position that the petitioner has right to draw attention of this Court to ensure that the communal atmosphere is kept clean and unpolluted. He has done well to draw our attention to this danger....."

That was a petition filed by an Advocate of Bombay High Court. Rule 32(1) refers to any complaint received by the Board after the film has been certified for public exhibition, it shall send it to Central Government. Under Rule 32(2) the Central Government would direct the Chairman to reexamine the film in respect of which the complaint has been received directly by it or through the Board. Therefore, the citizens have a right to complain about a film immediately after certification. This film was certified on 7-12-87. Hence, even before it is exhibited in theatres, when the statutory rules contemplate lodging of complaints by public no objection could be taken, if the citizen moves the Court for relief after certification, but before public exhibition. In W.P. No. 1181/88 the petitioner had prayed for issue of a Writ of Mandamus directing the concerned authorities to decertify the film. Hence, both writ petitions having been heard together, and when the Court can always mould the reliefs as held in Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , these Writ petitions are maintainable.

11. The next point taken is that there were procedural irregularities in issue of certificate. On 7-10-1987, the 5th respondent (hereinafter called as producer) submitted an application to the Board for Film Certification: On 30-10-1987 the Examining Committee saw the film and recommended refusal of certification. The

reasons given by it were communicated to Producer on 30-10-1987 by stating "the Board has provisionally come to the conclusion that a certificate cannot be issued for its Exhibition." He was granted 14 days time to make his representations, failing which, the Board would proceed to take action as indicated therein.

12. It is the contention of Mr. Anantha Raju, learned Counsel for the petitioner in W.P. No. 1166 of 1988/W.A. No. 469 of 1988 (ranking of parties as in writ petition) that after the Board having issued the show cause notice, it could not have thereafter referred the matter to the Revising Committee and Second Revising Committee, because under : Section 4(2) of the Act, the Board can give only one opportunity to the applicant to represent his views in the matter. Section 4(2) of the Act reads as follows :--

"No action under the proviso to Clause (i), Clause (ii), Clause (ii-a), Clause (iii) or Clause (iv) of Sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter."

Section 4(1) is as follows : --

"Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner : --

(i) to (iii).....

(iv) refuse to sanction the film for public exhibition."

13. Mr. S. Govind Swaminathan, learned Counsel for the producer and Mr. C. Krishnart, learned counsel for respondents 1 to 4, would submit that Section 4(2) read with Rule 24(8)(b) and Rule 41(5)(a) and (b) contemplate extending an opportunity to make representations against opinion expressed by Examining Committee, and therefore, no irregularity in procedure had occasioned in issuing the certificate.

14. Though a contention is raised by petitioner that Section 5B(1) uses the word "in the opinion of the authority competent to grant the certificate" under the Act. It is only the Board which could issue the certificate. The relevant provisions of the Act are as follows :--

According to Section 2(b), "Board" means the Board of Film Certification constituted by the Central Government u/s 3 and as per Section 2(bb) "Certificate" means the certificate granted by the Board u/s 5A, Section 3 states that a Board of Film Certification shall be constituted by Central Government consisting of a Chairman and not less than twelve and not more than twenty five other members appointed by Central Government. Section 4 states that any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for issue of a certificate, and it may, after examining it, issue any one of the classified certificates or refuse to sanction the film for public

exhibition. Section 4(2) extracted above deals with extending of opportunity under stated circumstances. Section 5(1) enables the Central Government to constitute advisory panels at regional centres for, examination of films. The Board may consult in the prescribed manner any Advisory Panel, and it will be its duty to examine and send recommendations to the Board. After examining the film in the prescribed manner, u/s 5A, the Board can issue any one of the classified certificates which shall be published in the Gazette, and such a certificate would be valid through out India for a period of 10 years. Section 5B(1) states that a film shall not be certified for public exhibition, if in the opinion of the authority competent to grant the certificate that it is against the interests of the Sovereignty, integrity of India and security of the State, friendly relations with foreign States, public order, decency or morality or involves defamation or contempt of Court or is likely to incite the commission of any offence. Subject to these provisions, u/s 5B(2) the Central Government may issue directions as it thinks fit setting out the principles which would guide the authority competent to grant the certificate. u/s 3C(1) an appeal would be, when a certificate is refused by the Board or under stated circumstances within thirty days to the Tribunal. According to Section 5E(1), notwithstanding anything contained in Section 6(2), the Central Government has the power by a notification to suspend a certificate granted under certain circumstances. Section 5F states that as against an action taken u/s 5E, the Central Government could be moved to review the order. Section 6 confers revisional power on the Central Government, notwithstanding anything contained in Part II of the Act, to suo motu call for records, and after enquiry, make such orders in relation thereto as it thinks fit, and then the Board is bound to dispose of the matter in conformity with the said order. Section 8(1) enables the Central Government to make rules for the purpose of carrying into effect the provisions contained in Part II. Section 9 confers on the Central Government the power of exemption.

15. As for Cinematograph (Certification) Rules, 1983 (hereinafter called as Rules), they came into force on 1-6-1983. The relevant rules are as follows : --

Rule 2(ii) defines "Advisory Panel" as the Advisory Panel of the Board constituted under Rule 7. According to Rule 2(V1), "Chairman" means the Chairman of the Board. Rule 2(xii) states : "Member" means a member of the Board and includes the Chairman. Rule 7 deals with constitution of Advisory Panels, at each Regional Office of the Board. Rule 21 deals with application to certify a film for public exhibition in Form I or Form II as set out in the second Schedule. It is to be addressed to the Board and delivered to the Regional Officer concerned, as per first Schedule. Rule 22 deals with Examining Committee. Rule 22(2)(b) states that Examining Committee in the case of a long film, shall consist of four members of the Advisory Panel and then an Examining Officer. Rule 22(4) states that all previews of films, for the purpose of examination for certification, records, and reports relating thereto, should be treated as confidential. Rule 22(5) states that names of members of the Examining Committee shall not be disclosed to any official or non-official, not concerned with the preview of the

particular film or to any other person including the applicant or his representative. Rule 22(6) prohibits the applicant or his representative from being allowed to be present inside the preview theatre. Rule 22(8) states that the Examining Committee shall examine the film having regard to the principles for guidance in certifying films specified in Section 5B(1) and the guidelines issued u/s 5B(2). Under Rule 22(9) every member of the Committee shall before leaving the preview theatre, record his opinion in Form VII set out in Second "Schedule "spelling out in clear terms the reasons therefor" and state whether he or she considers as to which grade of certificate to be granted, and if it is not suitable, as to why the film should be refused a certificate. Rule 22(11) states that the Examining Officer after seeing the film shall see that the recommendation of every member is recorded in unambiguous terms, and that the members have signed their reports, and if the report of any member is incomplete, it is his duty to bring it to the notice of the member concerned. Section 22(13) is an important provision, which states that it shall be, the personal responsibility of Examining Officer to examine whether the guidelines issued by Government have been followed and bring to the notice of the Chairman about any lapse or deviation committed. Rule 22(14) deals with quorum for the Examining Committee for a long film being four. Rule 23 deals with certification after receipt of the records under Rule 22(12) by the Chairman, unless the provisions of Rule 24(1) are not attracted. Rule 24 deals with Revising Committee. Rule 24(1) states that on receipt of the records under Rule 22, the Chairman of his own motion or on the request of the applicant may refer it to a Revising Committee. Under Rule 24(2) the Revising Committee, shall consist of Chairman and not more than 9 members being the members of the Board or members of any of the advisory panels. R, 24(5) prohibits any member of the Examining Committee to become a member of the Revising Committee in respect of the same film. Rule 24(6) states that Sub-rules (4) to (8) of Rule 22 shall apply mutatis mutandis for the Revising Committee and the Board. Rule 24(8) states that for the purpose of examination by Revising Committee, the applicant, who had made a representation u/s 4(2) shall furnish 14 copies of synopsis of the film together with text of songs. Rule 24(9) states that each member of the Revising Committee shall before leaving the preview theatre shall record his recommendations in Form VIII set out in Second Schedule spelling out in clear terms the reasons therefore and stating whether he or she considers as to which grade of certificate to be granted, and if it is not suitable, as to why the film should be refused ; a certificate. Under Rule 24(10) the Presiding Officer should send the recommendations to the Chairman within three days. Rule 24(11) deals with the quorum of the Revising Committee being five. It is Rule 24(12) which requires to be extracted, and it is as follows : --

"The decision of a Revising Committee shall be that of the majority of the members attending the examination of the film and, in the event of an equality of votes, the Presiding Officer shall have a second or casting vote :

Provided that where the Chairman, disagrees with the decision of the majority of

the Committee, the Board shall itself examine the film or cause the film to be examined again by another Revising Committee and that the decision of the Board or the second Revising Committee as the case may be shall be final".

16. Under Rule 25, on receipt of the orders u/s 4 or Section 5A, the Regional Officer, shall communicate the same to the applicant. Under Rule 26, a certificate can be issued subject to removal of certain portions of the film. Rule 32 deals with re-examination of certified films by the order of the Central Government, on complaint received by it or by the Board.

17. Form VIII at the lop states as follows : --

"N.B- 1 Please study the guidelines issued by Government once again before you preview the film.

2. Please remember that the objectives of film censorship are to ensure that the medium of film remains responsible and sensitive to the values and standards of Society; that artistic expression and creative freedom are not unduly curbed and that censorship is responsive to social change".

18. Part B(5A) in it contains prescribed guidelines. The guidelines issued u/s 5B of the Act amended up to 7-5-1983 are as follows: --

".....The Board of Film Censors shall be guided by the following Principles : --

1. The objectives of film censorship will ensure that,

(a) the medium of film remains responsible and sensitive to the values and standards of society;

(b) artistic expression and creative freedom are not unduly curbed and,

(c) censorship is responsive to social change.

2. In pursuance of the above objectives, the Board of Film Censors shall ensure that;

(i) anti-social activities such as violence are not glorified or justified;

(ii) the modus-operandi of criminals or other visuals or words likely to incite the commission of any offence are not depicted;

(iii) pointless or avoidable scenes of violence, cruelty and horror are not shown;

(iii-a) scenes which have the effect of justifying or glorifying "drinking are not shown. ".

(iv) human sensibilities are not offended by vulgarity, obscenity and depravity;

(iv-a) visuals or words depicting women in ignoble servility to man or glorifying such servility as a praiseworthy quality in women are not presented;

(v) visuals or words contemptuous of recial, religious or other groups are not

presented;

(vi) the sovereignty and integrity of India is not called in question;

(vii) the security of the State is not jeopardised or endangered;

(viii) friendly relations with foreign States are not strained;

(ix) public order is not endangered;

(X) visuals or words involving defamation or contempt of Court are not presented.

3. The Board of film Censors shall also ensure that the film :

(i) is judged in its entirety from the point of view of its overall impact and,

(ii) is examined in the light of contemporary standards of the country.

18A. Now coming to the points taken by Mr. Antha Raju, though Section 5B(1) states that "in the opinion of the authority competent to grant the certificate", the one and the only authority competent to grant a certificate as defined u/s 2(bb) read with Section 5A is only the Board constituted u/s 3(1) of the Act. Rule 35(2) states that the certificate shall be signed for and on behalf of the Board by the Chairman or by Regional Officer for the Chairman. Section 5B(1) was amended by Act 49 of 1981. Evidently, there had been a drafting error in using the expression "authority competent" instead of using the word "Board". Except the Board as constituted u/s 3(1), no other authority could ever issue a certificate.

19. The next point is that only one opportunity should be extended u/s 4(2) by the Board before taking action u/s 4(1)(iv) because it clearly states that the producer must be given "an opportunity" for representing his views in the matter. When an application is made u/s 4(1) for issue of a certificate, the Act contemplates an integrated procedure for the convenience of producers by constituting Advisory Panels to function in different places. u/s 5(3), the Board may consult the Advisory Panel for a certificate to be issued. It sends its recommendation to the Board u/s 5(4), Rule 22 deals with the procedure to be followed by the Examining Committee. The recommendations made by the Examining Committee will have to be forwarded by the Examining Officer under Rule 22(12) within three working days of the recommendations. In such of those instances wherein no need arises for a Revising Committee to see the film; under Rule 23, the Chairman will take further action in directing the Regional Officer to act on behalf of the Board in conformity with the recommendations of the Examining Committee either unanimous or by majority. Then it tantamount to the Board taking a decision finally. In instances in which the Examining Committee refuses to certify u/s 4(1)(iv) then if a Revising Committee does not come into existence either on suo motu motion of Chairman or that applicant does not ask for it; then the Board before refusing certificate u/s 4(2) will have to extend an opportunity to the applicant, informing the applicant the grounds on which the decision is being taken. The point raised is, in an instance wherein a

Revising Committee comes into existence, would it be proper for the Board to inform the applicant of the reasons which prevailed on the Examining Committee for refusing a certificate or should it withhold and simply ask the applicant as to whether he wants the Revising Committee to see the film, because the Examining Committee is" not inclined to grant a certificate? If he does not ask for the Revising Committee, Board could then proceed to disclose to him the reasons and pass the final order after giving an opportunity to him. Examining Committee being only a recommending body, and since the Board could take a final decision in such instances only after the Revising Committee renders its opinion; there would be no need to disclose the reasons for refusal and ask the applicant to show cause, because the Board is yet to take the proper decision about refusal. Section 4(2), as it reads, contemplates only one opportunity to be extended, but yet, when the statutory rules having provided for the applicant to make his representations and in view of Rule 24(8)(b) read with Rule 41(5)(a) and (b), it has to be held that the views of the Examining Committee were intended to be made known to the applicant, before the Revising Committee is constituted. After all, extending principles of natural justice at every stage to the affected party cannot in any manner stand in the way of implementing the provisions of the Act. Hence, read with these Rules, Section 4(2) will have to be understood that the applicant gets more than one opportunity to represent his views, in such of those instances, where a Revising Committee comes to be constituted. Hence, in this regard, the procedural irregularity claimed does not exist."

The next point involved is whether the Revising Committee, which saw the film at 2.00 p.m. on 2-11-87 was constituted in accordance with the Statutory Rules, and if not, even then could its recommendation be treated as validly made?

Respondents 1 to 4 in the course of hearing produced two sealed envelopes claiming to contain the record of proceedings. They were not opened at that stage because of Rule 22(4) to (6), which are also applicable for the Revising Committee under Rule 24, and which contemplate confidentiality regarding the names, of members who have seen the film and their opinions recorded therein etc. It was then thought that if the matter gets concluded without looking into them, the envelopes could be returned as they are. But in the light of the various submissions made, the envelopes were opened and found to contain only xerox copies of hardly few communications and certain nothings made in the Madras Office, but they do not contain Form VIII opinions of the members and the correspondence exchanged between the Madras Office and Bombay Office, etc. This necessarily led to the matter being posted for further hearing, to impress upon respondents 1 to 4 that, whenever Rule Nisi is issued, they are duty bound to produce the original records and not the xerox copies of some communications, chosen by them to be relevant. Thereafter the original records were produced in Court. Petitioners having filed these writ petitions as public interest litigation had never had any access to these records, and therefore they did not know as to what sort of procedure had been followed by the respective authorities. To maintain the confidential nature of the matter, the records, were

not allowed to be perused by the petitioners" counsel and 5th respondent's "counsel, but without disclosing the names of members; as to what had transpired in the constitution of Revising Committee and how opinions were expressed etc., were made known to them. The 5th respondent, in writing has, then and there, put fourth clarifications on this point as raised, and learned counsel for respondents" 1 to 4 took the stand that, what had been done was in "bona fide" exercise of power and that no illegality had occasioned.

Rule 2(vi) defines the Chairman, meaning the Chairman of the Board. Section 3(1) states that the Central Government by its notifications can constitute a Board to be called "Board of Film Certification", which shall consist of Chairman and not less than 12 members but not more than 25 members. Rule 21 deals with terms and conditions of the Chairman of the Board. Rule 19 states that the meeting of the Board shall be presided over by the Chairman for in his absence, by a member elected by the members present. Rule 14 states that the Board shall meet once in a quarter but the Chairman may at any time call for an extraordinary meeting at any time, if he considers it necessary to do so. It is he who would decide the place where the Board meetings are to be held. Under Rule 15 he can co-opt certain members of the Board for the purpose of attending to a particular meeting of the Board. Under Rule 20 he has a right to cast second vote when equality of votes arises. When complaints, are received by the Board or by the Central Government after the film is certified, the Chairman would be called by the Central Government to re-examine the Certified film in such manner as specified by the directions of the Government of India. Under Rule 32(5) the Chairman will then forward his opinion to the Central Government, Of course to what extent he is vitally concerned under Rules 22 to 24 have been already referred to. This analysis has been made to highlight that the powers of the Chairman under the Act and the Rules are statutorily devised to be exercised by him alone.

Under Rule 22(12) the Examining Officer shall forward the recommendations of Examining Committee members within three working days of their making it, and on receipt of such communication; under Rule 23, the Chairman will decide whether Rule 24(1) would be attracted, and if not, to direct the Regional Officer to take up further action on behalf of the Board on the basis of the recommendations of the Examining Committee, either unanimously or by majority. In such of those cases, where a Revising Committee has to be constituted under Rule 24(1) it is the Chairman who may on his own motion or on the request of the applicant refer to the Revising Committee. Under Rule 24(3) which is important, it is the Chairman or in his absence a Member of the Board "nominated by the Chairman" shall preside over the meeting of the Revising Committee. Under Rule 24(7) the Revising Committee will examine the film on such date and time the Chairman may determine from time to time. Under Rule 24(10) the Presiding Officer of the Revising Committee shall within three working days send the recommendations of the members of the Revising Committee to the Chairman, and if the Chairman disagrees with the view of the

majority of the members of the Revising Committee, it is only the Chairman, who could constitute the "other Revising Committee".

This is an instance wherein, though second Revising Committee came into existence, at the instance of the Chairman the records produced will go to show that yet the Chairman had not constituted the Revising Committee. For this purpose it is necessary to refer to certain correspondence and nothings found in the file. On 15-10-87 the Addl. Regional Officer, Madras after recording that the Examining Committee had unanimously recommended for refusal of the certificate had made the undermentioned noting : --

"Report of E.G. Chairman"s order be sought through a telex message".

On that day itself the telex message sent was placed for approval. A draft letter was prepared to be sent to the Chairman for approval. It must be noted that under Rule 22(12) when the Chairman is away from the place where the film is examined, the Examining Officer will have to send the recommendations of the members of the Examining Committee, by registered post. On 30-10-87 a telex message dt. 28-10-87 received from the Head Office about the decision of the Board to refuse the certificate for the film is noted. Based on this, on 30-10-1987 the provisional conclusion to refuse the certificate was intimated to the producer and he was asked to submit his representations with 12 copies within 14 days thereof. This was issued by the Madras Office. This was acknowledged by the producer. On 2-11-87 the producer handed over the representations and asked for a Revising Committee to see the film. On that day itself the Madras Office handed over a communication to the producer "by hand", fixing the date and place of examination of the film by the Revising Committee at 2.00p.m. on 2-11-87 at Film Chambers". He was also asked to produce 12 copies of songs and synopsis at an early date to enable the Board to take further action in the matter. He was also asked to give a declaration that the print of the film now given to the Revising Committee is the same that was shown to the Examining Committee. On that day itself, the producer gave a declaration to that effect. At 2.00 p.m. on 2-11-87 the film was seen by the Revising Committee in the Film Chambers. While making notings the Madras Office stated on 2-11-87 as follows :-

"Reference Applicant"s letter. Applicant"s request for R.C. submitted for kind orders"-

It is followed up by recording : -

"R.C. at 2.00p.m. today at FC with the approval of the Board Member".

It was presided over by a Board Member and attended by eight others of which 2 are Board Members and others are panel members. The records produced do not contain any communication received from the Chairman"s Office at Bombay about the decision taken by him, under Rule 24(1) or that the representations made by the producer was ever sent to the Chairman or that the

Chairman had constituted the Revising Committee under Rule 24(3) by nominating a Board Member to function as the Chairman in his absence.

Rules 22(12) and 24(10) make it quite clear that, when vital decisions are taken, they will have to be in writing and sent by registered post.

..... Therefore, when statutory decisions are taken, they cannot but be in writing. They need not necessarily be sent by registered post, but it must be in writing. That was why the Regional Office sent the communication in writing to the Chairman. When representations are received from the producer seeking for Constitution of a Revising Committee, it could be done only by the Chairman. Such representations will have to be sent to the Chairman and only on perusing such representations the Chairman could take a decision thereon. He has a suo motu power. But here, it is nobody's case that he exercised such a power. In the letter given by the Madras Office, it is stated --

"I am directed to state that the film has been referred by the Chairman on your request to the Revising Committee."

One of the main attacks made in the earlier part of hearings is that there was undue haste in examining the film within 2 to 3 hours of the receipt of the representations from the producer, and that was because of the favouritism and directives from higher ups in Delhi and that the film got "U" Certificate. It was contended that the hurried Constitution of the Revising Committee was beset with illegalities. Extensive arguments were advanced by learned counsel for petitioners by referring to two communications bearing same date of the producer and of the Regional Officer, Madras and claiming that they by themselves will go to show that the caste factor had prevailed in hastily constituting the Revising Committee, and that, when caste factor is practised even in certifying films, the decision arrived at on that day was in abuse of powers and hence illegal.

When arguments were advanced on this line, the details above referred to were not available. Now that the records are available instead of going into the question of "mala fides" in the manner put forth, it would be rather better to find out, whether the Statutory provisions have been complied with or not?

The claim that undue favouritism and caste factor had prevailed upon in constituting the Revising Committee and even thereafter is left to the Central Government to be looked in to, instead of this Court spending its valuable time to further probe into the same.

What was the reason for the unusual haste in constituting the Revising Committee and in seeing the film within two or three hours of the presentation of the representation, remains unexplained. The respondents 1 to 4 in their counter-affidavit. Representation of the producer could have been filed only after the Madras Office opened at 10.00 a.m. on that day. At the top of it, a note is made that it was received on 2-1-1987. The time of receipt is not noted. The

cyclostyled communication issued informing about constituting the Revising Committee claims that the Chairman had referred the film to "Revising Committee." This is untrue. At the top, it was noted "by hand". When such a communication is issued, the normal procedure which follows is well reflected in paras 2 and 3 therein, which state that the producer will have to furnish 12 copies of songs and synopsis at an early date to enable the Board to take further action of the matter along with a declaration as required. The usual words used are :

"The date and place of examination of the film will be intimated to you in due course."

Therefore this cyclostyled form makes it quite clear as to what is the normal procedure obtaining in the Madras Office, when the Chairman takes a decision to constitute a Revising Committee. What had happened is, the words "intimated to you in due course" have been struck out, and written as "2.00 p.m. at FC on 2-11-87". Hence, evidently this communication had been handed over to the producer on the presentation of the representations, within few minutes. It is equally surprising to find that 9 members were present at 2.00 p.m. It may be possible, but where was the need to inject such an electrifying speed to constitute a Committee in this manner? Was it felt that, if the film is not immediately recommended, the Nation's integration will be lost? It is such an urgent matter to void the normal procedure, which is incorporated in the cyclostyled letter? In the communication of the Madras Office, it is stated--

"..... I am directed to state that the film has been referred by the Chairman on your request to Revising Committee....."

Therefore, when a claim is made that the Chairman had referred the film, it must be shown by respondents 1 to 4 that the Chairman had taken that decision under Rule 24(1). But, what is stated is, the Chairman had not taken any decision, but the Board Member at Madras had taken a decision to constitute a Revising Committee. This leads to an interesting point.

Mr. C. Krishnan, learned counsel for respondents 1 to 4 relies upon Section 7B(1) to claim that the Central Government had delegated the authority of the Board to be exercised by a Board Member at Madras. He produces an order dt. 21-1-87 issued by Central Government in exercise of power conferred on Section 7B of the Act. Mr. Maithreyi Ramadurai has been nominated there under for Madras. Clauses 2(a) to (c) therein put certain restrictions. Under Clause 2(d) it is stated that in cases where an authorised member of the Board does not accept the unanimous decision of the Examining Committee or on the applicant requesting for reconsideration of the decision of the Examining Committee, she can constitute a Revising Committee. Why then address Chairman on unanimous view of Examining Committee? When he had exercised power now she could intercept? There is no noting by her anywhere in the file to that effect. How, when and in what manner the Board Member had taken such a decision are not

found. The Regional Officer had not addressed the Board Member and secured any written order. When a person is authorised to exercise certain statutory powers, it must be done reasonably and by following the prescribed rules. Why this matter was in this manner handled by the authorised Board Member?

When a Revising Committee is to see the film under Rule 24(8) the producer has to furnish 15 typed or printed copies of complete synopsis of the film together with the full credit title of the full songs and 15 copies of representations. This statutory requirement is mentioned in the letter dt. 2-11-1987. The producer had not complied with it. In his reply given on that day (evidently across the table when notice was handed over), he had given the required undertaking, but no mention is made about handing over of these copies. He does not claim that he had complied with it, nor had he invoked third proviso to Rule 24. There is no noting made anywhere, that the documents had been dispensed with. All these cannot but lead to an inference that the producer has had the benefit of unusual favours in having his film reviewed within 2 or 3 hours of the presentation of his representations.

By invoking Section 7(b)(i), the Central Government had made the Chairman ineffective. Could this be done validly under the Act and Rules, as they now stand? Certainly 7B confers power on the Central Government to delegate the power, authority or jurisdiction exercisable by the Board under the Act, for purposes of Part II, on the Chairman or any Board Member. Under the order issued on 21-1-87 the power of the Board in relation to certain aspects alone have been permitted to be exercised by the authorised Board Member.

Does the delegation of Powers u/s 7B enable the Board Member to exercise powers contrary to the statutory Rules? In certifying a film by the Board under the Act, it is the bounden duty of Board to follow the prescribed procedure. Section 8 deals with rule making power. Section 8(2)(e) reads as follows :

(8)(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for--

(e) the manner in which the Board may consult any advisory panel in respect of any film."

Section 8(3) stipulates that the Central Government shall lay the rules so made, before both houses of Parliament. Hence, when rules are made u/s 8, they are statutory in nature. Therefore the Board is bound to adhere scrupulously to these statutory rules, while exercising its powers.

What could be delegated u/s 7B is to confer the powers of the Board either to the Chairman or to any member of the Board and based on such delegation, when the Chairman or a member of the Board exercises power or authority or jurisdiction of the Board, the delegate cannot do anything different from what the Board itself is statutorily bound to do, under the statutory rules. The Board cannot perform its duties in any manner other than as prescribed under, the

Rules. It cannot claim that if being the custodian of the power in sanctioning or certifying the films for public exhibition can act contrary to the prescribed rules, and avoid following statutory rules. Equally Government having revisional powers is bound to follow statutory rules. When the Board itself cannot act contrary to the prescribed rules; the delegation made u/s 7B cannot go to the extent of conferring on the Board Member any power, other than what the Board could do under the Act and Rules. By any executive fiat, the statutory rules cannot be avoided by Government. In *Chandrika Jha Vs. State of Bihar and Others*, it was held that when power is conferred on Registrar under Rule 15 of Bihar Co-operative Societies Rules, it cannot be exercised by Chief Minister. Hence, when statutory power stipulates a procedure, it must be followed. Therefore; this excessive delegation which is relied on under Clause 2(d) of the order dt. 21-1-1987 being contrary to the statutory rules placed before both Houses of Parliament cannot stand in the way of the Chairman exercising his powers under Rule 24(1). The nature of the power exercisable by Board Member is limited under Clauses 2(a) to (c). They are in consonance with Rules. When the delegate wants to exercise the power, it could be done by following the rules. It cannot be contrary to the Rules. Sending simultaneous intimation to the Chairman is not compliance with Rule 24(1). When Board itself is not authorised under the Rule to refer to a Revising Committee and when it could act only through the Chairman; this delegation by Central Government is invalid. This sort of delegation has been issued by the Central Government, without taking note of the statutory rules. When so many oddities had occasioned, and more particularly when" the delegate u/s 7B cannot but comply with the statutory rules, and when the Revising Committee had not been constituted by the Chairman as required under Rule 24(1); the decision recorded on 2-11-87 by Boarc Member is not valid in law. In the absence of a Revising Committee having come into existence as known to law; there could have been no occasion to constitute a Second Revising Committee. Therefore when the Certificate had been issued without legality constituted Revising Committee and Second Revising Committee coming into existence, it is invalid and inoperative.

Mr. S. Govind Swaminathan, learned counsel for the producer relies upon Section 7D of the Rules. It runs as follows :

"7D. No act or proceeding of the Board, the Tribunal or any advisory panel shall be deemed to be invalid by reason only of a vacancy in, or any defect in, the Constitution of the Board, the Tribunal or panel, as the case may be."

This is not a case where a vacancy arose. As to whether it would come within the expression "any defect in the constitution of the Board, the panel or the Tribunal as the case may be"; what occasioned has to be considered. More or less similar provisions exist in Panchayat Acts, or Co-operative Societies Acts to prevent resolutions passed becoming invalid, because a particular member may not have requisite qualification or might have got disqualified for various factors, or that the meeting had been convened without proper notice and the like. But here, the

defect in the constitution of the panel goes to the very root of the matter. Any meeting convened by a person without authority or power would be without jurisdiction, and hence anything done by that congregation will be illegal. In such circumstances, Section 7D could have no applicability. If what is contended by producer is accepted, then if the delegated Board Member constitutes a panel of persons all of whom have not been nominated by the Government, could it then be claimed that its constitution is protected u/s 7D?

Therefore on this point it is held, that the hurriedly constituted Revising Committee on 2-11-1987 by the delegate Board Member was not lawfully constituted, and the recommendation made by it was not valid in law, and hence Certificate issued by Board on 7-2-1987 is invalid.

When it comes to the knowledge of the Court that statutory rules have not been complied, with, it cannot but take note of the resulting illegalities. It is claimed by learned counsel for producer that such a point, regarding invalidity of delegation was not taken in the affidavits of the petitioners. In a public interest litigation, such procedural formalities as in "adversary litigation" cannot be insisted upon as held in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, . It is but necessary, that a Court, on coming to know of illegalities, should not overlook it. Delegation order was produced only on 18-4-1988. Last hearing was on 21-4-1988. Under such circumstances, a specific plea about this could not be raised at the inception by petitioners. Hence, after hearing producer's counsel who gave a written note on this point, the aforesaid finding in previous para, is rendered.

There is yet another significant omission committed by the Revising Committee. Rule 22(9) enjoins upon the Examining Committee Members to record their opinions in writing in Form No. VIII as per Schedule II "spelling out in clear terms the reasons therefor" and state whether the film is suitable for unrestricted public exhibition and fit for the grant of "U" Certificate or unfit for public exhibition. The proceedings of the Examining Committee clearly show that they have scrupulously followed the rules and rendered a unanimous decision for refusing Certificate for reasons stated by them. The reasons for refusal as found in the notice dt. 30-10-1987 are as follows :

"Reasons for Refusal:

1. The theme of the film is that a Brahmin purposely changes the caste of his daughter to Adi Dravida, a scheduled caste community to get educational benefits and ultimately she becomes an I.A.S. Officer. When the falsehood is revealed she and her father argue in the court against the established policy and the rules of the Government in providing reservation for backward classes, scheduled castes and scheduled tribes for education and jobs. There are many dialogues in criticising the reservation policy of the Government on caste basis. So the very theme of the film is against the accepted policy of the Government (based on constitutional provisions) in giving reservations to Scheduled Castes

and Scheduled Tribes. So this film contravenes guidelines 2 (x).

2. The film if exhibited in the present form is likely to endanger public order because it may instigate clashes between forward castes and backward classes including Scheduled Castes and Scheduled Tribes. Thus the film contravenes guideline 2 (ix).

3. Judged in its entirety from the point of view of its overall impact, the film is likely to have a negative impact on the society as it criticises and ridicules reservation policy of the Government. The film thus contravenes Guidelines 3 (i)."

Likewise Rule 24(9) enjoins upon each member of the Revising Committee to spell out in clear terms his or her reasons in writing, as to whether the film is suitable for unrestricted public exhibition i.e., fit for "U" certificate or whether the certificate is to be refused. Hence there will be circumstances in which the Revising Committee, even if it finds that the film is suitable for the grant of "U" certificate it has to record its reasons in clear terms. The prescribed form states that the members of the Committee have to study the guidelines, once again, before seeing the film. In a matter of this nature, in which when the Examining Committee had unanimously decided not-to certify the film and given reasons therefor; unless each member had given reasons as to how the opinion of the Examining Committee in relation to each of the guidelines had been arrived at erroneously; by merely stating "Yes" against guidelines, it would not amount to proper compliance of the statutory rule. In framing the rules, considerable emphasis had been laid to compel the members of the committee to give reasons for "any" kind of decision that may be arrived at.

Mr. S.Govind Swaminathan contends that by marking "Yes" against each guideline, the satisfaction for "U" certificate is disclosed, The guidelines prescribed by the Government cannot be ever understood as "spelling out in clear terms the reasons". No Form formulated under Rules can circumscribe the ambit of the mandate stipulated in Rules. It is unfortunate that, for Rule 24 also, same Form VIII had been prescribed. Rather a column must find a place to comply with requisitions in the Rule, at least in instances in which "U" certificate is granted in spite of refusal by Examining Committee. In instances of this nature the Revising Committee members having been provided with the views of Examining Committee and copies of representations furnished by producer under Rule 24(8)(b), members are bound to give reasons as to why they take a different decision to give "U" Certificate.

As for giving reasons for granting "U" certificate, it is not an impossibility of performance, even for Examining Committee Members. Even a child is asked to give reasons to a question, if the answer is Yes or No. Equally to grant a licence or permit, the authority gives reasons, To decree a suit claim, reasons are written. Where so much of emphasis had been laid to compel members to give reasons for every category of guidelines Nos. 2 and 3, the manner in which the Revising Committee members have marked "Yes" is not proper compliance, and

more particularly when they take the diametrically opposite decision. The recording by Presiding member, of any discussion of how they struck to their view is not in compliance with rules, when each member in writing, has to give his opinion,

In the instant matter none of the 7 members had spelt out in clear terms reasons for the revised view arrived at by them. Hence, they have failed to comply with the mandatory requirements of Rule 24(9)(a). This is yet another infirmity committed by Revising Committee. The Chairman disagreed with this majority view, for the manner in which topic was treated in last two Reels. Further when reasons were not given by majority, he had to refer to 2nd Revising Committee. If for any reason it is held that these procedural defects do not exist, even then for the reasons stated hereunder, the certificate issued cannot be valid.

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Before dealing with the contraventions of guidelines, the story of the film, as found in Second Revising Committee Minutes is as follows :

"The main plot of the film, which is told in flash back, is that a Brahmin widower, Shankara Sastry, who apprehends, at one stage, that his very talented daughter Gayatri was not likely to get admission to college for further studies because she belonged to a Brahmin community, seeks, advice from his close friend Devasahayam, a Tahsildar. The Tahsildar who otherwise belongs to a very poor family and whose father was working in a local Church, wanted to repay a debt of gratitude to Sastry's family because it was through Sastry's father that he got proper education and rose to become a Tahsildar. In view of Government's reservation policy for the benefit of "backward communities" identified as per caste system, the Tahsildar prepares a false certificate showing Gayatri as Karuppayee belonging to an Adi Dravida Community and as an orphan. On the basis of this false certificate, Karuppayee gets admitted to college and enters I.A.S. Witness to this arrangement was the brother-in-law of the Tahsildar, a man called Anthony.

Years later, Karuppayee, who was working in Delhi, is sent to a rural village called Annavail as a special officer for flood relief operations. Her father Shankara Sastry happens to work in the same village as Block Development Officer. However, both of them pretend not to recognise each other. Karuppayee takes her work seriously and improves the living conditions of the people of the village to such an extent that she is held by them in high esteem. By a coincidence, after the death of the Tahsildar, Anthony comes to live in the same village and recognises Karuppayee. He starts blackmailing her with a threat to reveal the fraudulent means by which she got the caste certificate and extracts money from her frequently. However, one evening when he visits Karuppayee's house, he is

confronted by Shankara Sastry who puts a halt to his blackmailing. Anthony however dies of sudden heart attack later but not before he informs the Government about the facts relating to Karuppayee. The Government suspends on preliminary enquiry, both Karuppayee another father and eventually both of them face trial in the Court. The people of the village resentful of Government action against Karuppayee rise as one man and demonstrate before the Court in a peaceful manner for her release. They also send petitions to the Government.

Karuppayee and her father admit in the Court the fact of their having obtained the false caste certificate but attribute it to circumstances as a result of Government reservation policy on caste basis. While making this statement before the court, they say that they are prepared to undergo any punishment. They also argue that the reservation policy should not be based on caste, but should be based on economic considerations. Just about the time when the judgment is to be pronounced, the Court receives intimation from Government that in the light of petitions received from the public, the case against Karuppayee and her father stands withdrawn, Karuppayee goes back to her Government job."

Learned counsel for petitioners contended, relying upon certain portions of the script of the film, that several guidelines framed u/s 5-B(2) have been contravened. The Examining Committee unanimously found that the guidelines 2(ix)(x) and 3(1) have been contravened. One member of the Revising Committee felt that the constitutional provisions are questioned and that the screening of the film will create law and order problem and create negative response on public. Four members of the Second Revising Committee found that Guideline 2(v)(ix) read with directions in I(a) and 3(i) had been violated. Mr. S. Govind swarnnathan, learned-counsel for the producer, submitted that, when the specialised body has already certified the film by a majority of 5-4, the Court could only take into account the total impact of the film as a whole and cannot go into the question, so as to find out whether a particular statutory guideline has been contravened or not, According to him once certificate is issued to a film, the High Court is powerless, and it cannot go behind the certificate to find out whether the decision to grant the certificate was correct or not. He read the decision reported in K.A. Abbas Vs. The Union of India (UOI) and Another, in extenso. It was a case filed to declare the provisions in Part II of the Act together with the Rules prescribed on 6-2-1960 u/s 5B of the Act are unconstitutional and void. In upholding the validity of the provisions of Section 5B of the Act, the Supreme Court held that the fundamental right of freedom of speech and expression should not go to pervert or harm the society, and a line has to be drawn somewhere by issue of guidelines. He then relies upon Raj Kapoor Vs. Laxman, which deals with the producer being prosecuted before a Magistrate u/s 292 IPC. In that it was held that --

" -- neither the Penal Code nor the Cinematograph Act can go beyond the restrictions sanctioned by Part III of the Constitution and once the special law

polices, the area it is pro tanto out of bounds for the general law. Further Section 79 IPC resolves apparent conflict between Section 292 IPC and Part II of the Act, which is the special law."

After referring to K.A. Abbas Vs. The Union of India (UOI) and Another, it was held that under the Act the Board of Censors is set up consisting of "high calibre and expertise and provides for hearings, appeals, and ultimate judicial review, precensorship and conditional exhibitions and wealth of other policing strategies." Then reliance is placed by learned counsel on Ramesh Dalal Vs. Union of India (UOI) and Others, to claim that the picture must be viewed in its entirety for finding out its message and if this yardstick is satisfied then the certificate cannot be questioned.

The contention that the Court is powerless to go into the question of whether the statutory guidelines have been complied with or not is without any substance, because the Supreme Court in Raj Kapoor and Others Vs. State and Others, has held as follows :-

".....Regard must be had by the Court to the fact that the Certificate represents the judgment of a body of persons particularly selected under the statute for the specific purpose of adjudging the suitability of films for public exhibition and that judgment extends to a consideration of the principal ingredients which go to constitute the offences under Sections 292 and 293 of the Penal Code. At the same time the Court must remind itself that the function of deciding whether the ingredients are established is primarily and essentially its own function, and it cannot abdicate that function in favour of another, no matter how august and qualified be the statutory authority."

Mr. Justice Krishna Iyer, who delivered the leading judgment has held as follows :
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"The Film Censor Board, acting u/s 5A of the Cinematograph Act, 1952 is specially entrusted to screen off the silver screen pictures which offensively invade or deprave public morals through over sex. There is no doubt that a certification by a high powered Board with specialised composition and statutory mandate is not a piece of utter in consequence, It is relevant material, important in its impact though not infallible in its verdict. But the Court is not barred from trying the case because the certificate is not conclusive. Nevertheless the Magistrate shall not brush aside what another tribunal has for similar purpose, found. May be even a rebuttable presumption arises in favour of the statutory certificate but could be negated by positive evidence. An act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed. But the extreme contention that a Board certificate bans the Criminal Court's jurisdiction under Penal Code must be rejected. The Court will examine the film and judge whether its public display in the given time and clime, so breaches public morals or depraves basic decency as to offend the penal provisions."

In *Ramesh Dalal Vs. Union of India (UOI) and Others*, , in a matter instituted by way of public interest litigation, it was held that, the petitioner has a right to challenge the certification of the film by drawing the attention of the Court, to ensure that the communal atmosphere is kept clean and unpolluted. In *Raj Kapoor Vs. Laxman*, it was pointed out that the ultimate judicial review exists. Therefore, the objections raised by learned Counsel Mr. S. Govind Swaminathan that, after the film is certified, the High Court cannot go into the question as to whether the statutory guidelines have been complied with or not has to be rejected. The plea that the film must be considered as whole is itself one of the guidelines. While issuing guidelines, under Clause 2. various aspects are referred to, and then it is stated in Clause 3 that the Film Censors shall also ensure that the film is "judged in its entirety from the point of view of its overall impact" Therefore, when the Court can go into the question to find out whether Clause 3 of the guidelines has been complied with or not, it necessarily means that it could also find out, whether other statutory guidelines have also been properly complied with or not. For example, one of the statutory guideline is No. 2(vi) which states that "the sovereignty and integrity of India is not called in question". By oversight or by not understanding the language used in the film the certificate is issued. Does it mean that later on when a citizen of this country is able to prove before this Court that one of the sentences spoken to by a character in the film advocates for separation of a State from this Country, the producer could then effectively prevent the High Court from reading the script and claim that it cannot ask for deletion of that sentence and that it can only look into overall impact of the film ? As held by the Supreme Court in *Raj Kapoor and Others Vs. State and Others*, issue of a certificate is not the conclusive proof that the film does not offend any of the guidelines. The Act itself provides for de-certification of film. Revisional power is conferred on the Central Government. As held by the Supreme Court, the ultimate judicial review exists. These remedies are intended to implement the provisions of the Act faithfully and meticulously. Certification of a film is a statutory task discharged by the Board. When it fails to abide by the statutory directions, each and every omission or commission by it will be eradicated, when subjected to judicial review. Therefore the petitioners are in no manner prevented from pointing out as to which are the portions in the film which ought to have been deleted, on the ground that they contravene statutory guidelines. Hence, "apart from finding out whether Clause 3 of the guidelines is complied with or not, the Court has necessary jurisdiction to find out, whether 2 of the guidelines have been complied with or not.

In Reel No. 14, in the Court scene, an. Advocate puts a question to the heroine as to the whether she is carrying on with two names viz., Gayathiri and Karupayyee and whether her father's name is changed as Swamikkanny instead of Sankara Sastri. Then the Advocate puts a suggestion that carrying on with double name and playing double game may be their ancestral character. To this Karuppayee, the heroine, replied stating that this sort of carrying on double name and double game did not happen, when her father was educated in those

days. Then the Advocate asked her as, to what was that time. She replied that it was the time when the British was ruling India. Then the Advocate reminds her stating that it was the time when India was a slave Country. Karuppayyee claims that there was independence of education. In those days in any walks of life opportunities were available It was done on merit basis only and not on constituency wise polling of votes. The exact Tamil version of it is extracted hereunder : (Matter in vernacular omitted -- Ed.)

The contention of the petitioners is that, by these claims made, the British rule is culogised and glorified when compared to Independent India, and that viewers would be made to believe that the British rule was better than free India because education was better administered by the Britishers and that they provided better opportunities to people in India in every walk of life. The opening scene of the Court proceeding will leave impression in the mind of audience that in every walk of life British India gave opportunities in all walks of life on merit basis, which the independent India had taken away. It is preposterous and offensive to claim that education was independent, when India was under British rule, and that, after Independence it is not there. When millions of Rupees have been invested by extending free education and when Crores of students are turning out in this Country from scores of education institutions started after Independence, to put forth a viewpoint by asserting that during the British rule only education was free and opportunities were plenty in every walk of life to everyone is nothing but an insult to the entire Nation presented in very bad taste. Such a claim is highly objectionable, because it is untrue to the core. What follows after such conversation is not relevant on glorification of British rule. A question was then put by the Advocate asking whether she felt sorry for the hands of Bharatha Matha being then handcuffed ? She replied "Yes", and claimed that, at that time only handcuffs were there, but today she is the hands of animals : When she was asked as to what she meant by animals, she replied that they are politicians, who are instigating the masses with reference to caste, language, etc. If this sort of decrying India for being an Independent Nation is to be projected in films repeatedly, then in course of time, Citizens will lose faith in the integrity and sovereignty of India. With this sort of glorification made, how could it be claimed that the film stand for National integration ? That was why one Member rightly said, that it is a hollow claim. Hence guidelines 2(iv) and 2(vii) are contravened.

The next plea in the script relating to Court scene is that framers of the Constitution who incorporated the reservation policy in the Constitution should be punished, instead of punishing heroine's father alone.

In Reel 15 the following dialougue is found ; (Matter in vernacular omitted -- Ed.)

In brief what he claims is that, how it could be wrong to say that caste wise people should not be divided ? Outside world will laugh at us. Why not make a strict law that none should speak about caste ? Instead when law is made that for jobs and education reservation be thereon caste criteria, then it is not enough

to punish him, alone but also "Those who framed the law with flaw". Then he concludes that if there are no vacancies in schools, is it proper to say that those who have been educated all along are not entitled to get seat and only those who have not studied alone will get seats ? To say this why have a Government ?

The Examining Committee observed that "the very theme of the film is against the accepted policy of the Government (based on the Constitutional provision) in giving reservations to Scheduled Castes and Scheduled Tribes. So this film contravenes guideline 2 (x)". One of the Members of the Revising Committee also opined that "the theme of the film questions Constitutional provisions of giving concessions to backward classes." In the representation filed by the producer it was stated that the theme of the film is that, backwardness could be decided on the basis of economic backwardness and not on the basis of caste, and the film emphasis for bringing into existence a casteless society and a Secular State. In the further letter sent on 17-11-1987, it was stated that the film does not make a total attack on the reservation policy of the Government and the object of the theme of the film is to see that all members of the Society have equal opportunities in the field of education and employment. In the second Revising Committee four members have expressed their opinion, "that the film had treated in an irresponsible manner the subject matter of the reservation policy of the Government and events and characters in the film have been projected in an highly biased and distorted manner. That the so called appeal in the film "India is one" is a hollow appeal, which in effect touches caste sensitivity of the Brahmin forward caste. There is an implication that generally I.A.S. Officers are in humans. "One of the members felt that the impact of the film will create law and order problem. Another member expressed his opinion to the effect that the film will hurt the feelings and sentiments of certain sections of the public in general. The other five members while recommending for grant of certificate with some cuts, felt that the theme of the film is on the reservation policy of the Government and the theme tries to project a view that the reservation could be on the basis of economic backwardness and not on the basis of caste or language, and such a view could be expressed in a free country like India, and it did not violate the requisite guidelines. They have not expressed any opinion about guideline 3(i), whereas others have taken into account the total impact of the film. It was a decision of 5 : 4.

Most of the viewers also would only hold that the theme of the film is to attack those who introduced the concept of reservation and that it should go. Here and there to get over serious objections by Censors, 2 or 3 sentences are inducted on economic criteria as well. Hence, it has to be seen as to what is the meaning of the sentence extracted above. The producer has also asserted that the aim of the film is that, from Kashmir to Kanyakumari cast less society must exist, in which all the members will have equal opportunity in the field of education and employment. Hence, the theme of the film is to remove the reservation policy.

Having claimed that those who framed the law with flaw must be punished, it has

to be seen which is the law, under which the reservation policy came to be introduced in this Country. As to which is the law which deals with the reservation policy and which is under attack, Pathak, J, as he then was, in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, observed as follows :

"three provisions of the Constitution relate to reservations for Scheduled Castes and Scheduled Tribes. They are Article 46, Article 16(4) and Article 335, The three form a single frame of reference. Article 46, a Directive Principle of State Policy proclaims the principle that the State shall promote, with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. One of the modes in which the economic interests of the Scheduled Castes and Scheduled Tribes can be promoted is the reservation of appointments or posts in their favour in services under the State where they are not adequately represented. Article 16(4) declares that when the State intends to make such provision nothing in Article 16 shall prevent it from doing so. The equality of opportunity guaranteed to all citizens in matters relating to employment or appointment to any office under the State will not restrain the State from making such reservation. It is now well accepted that the equality provisions of Part III of the Constitution constitute a single Code, illustrating the multi-faceted character of the central concept of equality. Article 16(4) also is one facet. It enables a backward class of citizens, by the process of reservation in Government service, to move along the road to ultimate equality with the more advanced classes. It is part of the process of equalisation. Then follows Article 335. It provides that the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or a State, but -- and this is imperative -- such consideration must be consistent with the maintenance of efficiency of administration."

The decision in *K.C. Vasanth Kumar and Another Vs. State of Karnataka*, deals with the reservation policy by referring to its historical origin and of the necessity in incorporating it in the Constitution. In paras 110 and 111 it is stated as follows :

"An examination of the question in the background of the Indian social conditions shows that the expression "backward classes" used in the Constitution referred only to those who were born in particular castes, or who belonged to particular races or tribes or religious minorities which were backward. It is now necessary to ascertain the true meaning of the expression "backward classes" found in Article 15, Article 16, Article 338(3) and Article 340 of the Constitution. Article 338 and Article 340 are in Part XVI of the Constitution entitled "special provision relating to certain classes". The corresponding part in the draft Constitution was

Part XIV entitled "Special provisions relating to minorities" which contained nine Articles, Articles 292 to 301. Article 292 of the Draft Constitution referred to reservation of seats for minorities in the House of the People, the minorities being, the Muslim community and the Scheduled Castes, certain Scheduled Tribes and the Indian Christian Community. Article 293 of the draft Constitution made special provision regarding the representation of the Anglo-Indian community in the House of the People. Article 294 of the Draft Constitution dealt with reservation of seats for the Muslim community, Scheduled Castes, certain Scheduled Tribes and the Indian Christian community in the State Legislatures. Article 295 of the Draft Constitution authorised the Government to nominate a representative of the Anglo-Indian community to a State Legislature in certain cases. Article 296 of the Draft Constitution required the Union and the States to appoint members belonging to all minority communities in the State services consistently with the maintenance of efficiency of administration. Article 297 of the Draft Constitution required the Union to appoint members of the Anglo-Indian community in certain services as stated therein and Article 298 of the Draft Constitution provided for certain educational concessions to the Anglo-Indian Community over a certain specified period. Article 299 of the Draft Constitution required the President to appoint a Special Officer for minorities for the Union and the Governor to appoint a Special Officer for minorities for a State. Administration of Scheduled areas and welfare of certain Scheduled Tribes were entrusted to the President by Article 300 of the Draft Constitution and it made provision for appointment of a commission for that purpose. Article 301 of the Draft Constitution authorised the President to appoint a Commission to investigate the conditions of socially and educationally backward classes. It read as follows :

"301. (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the conditions subject to which such grants should be given, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendation as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before Parliament."

After referring to the corresponding part in the Draft Constitution dealing with the special provision relating to minorities, the resolutions regarding the aims and objects of the Constitution were moved by Pandit Jawarlal Nehru in the

Constituent Assembly on 13-12-1946 and it contains the following passage :

"6. Wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes;"

In paras 115 and 117 it is stated as follows :

"115. Clause (6) of the above resolution which was later adopted by the Constituent Assembly pledged to make adequate safeguards in the Constitution for minorities, backward and tribal areas and depressed and other backward classes. The above resolution and the history of the enactment of Part XVI of the Constitution by the Constituent Assembly lead to the conclusion that backward classes are only those castes, races, tribes or communities, which are identified by birth, which are backward. It is, therefore, difficult to hold that persons or groups of persons who are backward merely on account of poverty which is traceable to economic reasons can also be considered as backward classes for purposes of Article 16(4) and Part XVI of the Constitution.

117. The Drafting Committee by qualifying the expression "classes of citizens" by "backward" in Article 16(4) of the Constitution tried to reconcile three different points of view and produced a workable proposition which was acceptable to all the three points of view being (1) that there should be equality of opportunity for all citizens and that every individual qualified for a particular post should be free to apply for that post, to sit for examination and to have his qualifications tested so as to determine whether he was fit for the post not and that there ought to be no limitations, there ought to be no hindrance in the operation of the principle of equality of opportunity; (2) that if the principle of opportunity was to be operative there ought to be no reservations of any sort for any class or community at all and that all citizens if they are qualified should be placed on the same footing of equality as far as public service were concerned and (3) that though the principle of equality of opportunity was theoretically good there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. The whole tenor of discussion in the Constitution Assembly pointed to making reservation for a minority of the population including Scheduled Castes and Scheduled Tribes which were socially backward. During the discussion, the Constitution (First Amendment) Bill by which Article 15(4) was introduced, Dr. Ambedkar referred to Article 16(4) and said that backward classes are "nothing else but a collection of certain castes" (Parliamentary Debates 1951, Third Session, Part II Vol. XII at p. 9007). This Statement leads to a reasonable inference that this was the meaning which the Constituent Assembly assigned to "classes" at any rate so far as Hindus were concerned." At this juncture the petitioner refers to the historical Communal award dt. 14-8-1932 which conceded the demand of the untouchables who were to be granted separate electorates. This was opposed by Mahatma Gandhiji and he threatened to go on fast if such a separate electorate was announced. On 20-9-1932, he commenced his fasting until death as a protest against the grant of separate electorates to untouchables. In this background while framing the

Constitution, in Part XVI, Special provisions were made relating to certain classes, and under Article 332 even seats have been reserved for S.Cs. and S.Ts. Article 46 of the directive Principles of State Policy states that the State shall promote with special care the education and economic interest of the weaker sections of the people and protect them from social injustice and exploitation. By the first amendment to the Constitution, Article 15(4) was enacted to enable the State to make special provision for the advancement of socially and educationally backward class of citizens or for the Scheduled Castes and Scheduled Tribes.

Therefore, it is crystal clear that the Law under which the reservation policy came into existence in this Country is by enacting the Constitution of India. It was Mahatma Gandhi, the Father of the Nation, who gave the assurance to provide safeguards to depressed classes. To keep up the promise made by him and other Great Leaders of Independence movement, the law relating to reservation for the first time was made only by the Constitution. Therefore, the sentence "Those who framed the law with flaw" will have to be punished means that the framers of the Constitution of India must be punished". This is an outrageous claim, for which alone the entire film could be banned. However, it would be useful to refer to certain earlier conversations in this regard. In Reel No. 15 when the heroine's father was asked as to whether the obtaining of a false community certificate was not a criminal offence, he admitted as follows : (Matter in vernacular omitted - Ed.)

He admits that he had made a falsehood, but will not admit that it is a crime. Likewise when the heroine was asked, she stated that she had made a false statement about the caste, but it was not crime. She states that it was only the Government and the law, which made herself and her father to utter falsehoods. The Advocate then asked her as to whether it would be proper to put the blame on the Government and she states that when the Government itself does not adopt the correct approach, what was wrong in herself adopting the wrong approach ? She again states that was it not wrong on the part of the Government to assess her education based on her birth, instead of merit ? She then asks whether is it not proper for the Indian citizens to remove the obstacles standing in their way. Hence, when the trend of questions and answers devised shows that the main thrust is to project in the minds of people that the reservation policy itself was retrograde and that those who made that Law must be punished; the theme of the film is not for unshoring a casteless society, but the calculated aim is to remove the reservation policy itself which was incorporated in the Constitution by the framers of the Constitution of India as a historical necessity. There could be a fair criticism of Constitution of India to the extent permitted in Explanation 1 to Section 2 of the Prevention of Insults to National Honour Act 1971. Section 2 with Explanation (1) reads as follows :

"2. Insult to Indian National Flag and Constitution of India : Whoever in any public place or in any other place within public view burns, mutilates, defaces, denies, disfigures, destroys, tramples upon or otherwise brings into contempt

(whether by words, either spoken or written, or by acts) the Indian National flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1: Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this Section."

According to the petitioners, the producer, the director, script writer and the concerned actor should be punished under this Act, for claiming that the makers of the Constitution of India should be punished. The maximum prescribed is inadequate, when such audacity is shown. There can be no two opinions on this. Camouflagedly at one stage reference is made to adoption of economic criteria, but even then the law which brought reservation on Caste basis as now interpreted and implemented is upheld by Supreme Court. The fault laid in the film is on the makers of the Constitution. In interpreting the words "backward classes of Citizens", in Arts. 15(4) and 16(4) it has been equated to identifying backwardness by the Centuries-old Caste divisions brought about by Hinduism and not by Government.

Mr. Ramakrishnan, one of the learned Counsel for petitioners vehemently and emotionally contends that those who ask for removal of reservations in the Constitution must first abolish all their Caste practices which are pronouncedly practised even in this Century and when a simple practice like exhibiting Caste divisions in foreheads is not given up by them; they have with sinister motives have now come forward to get the Constitutional safeguards, intended to achieve equality being removed by misguiding people and administration. He submits, that this film producer who is publishing "The Hindu" is highly motivated in denigrating depressed classes and that the film was not taken with good intentions for abolishing Caste system because they are practised by them in every other activity in life.

All the important decisions of the Supreme Court dealing with the reservation policy and how hitherto by adopting caste as the basis the Constitutional intent is being achieved for identifying backwardness had been considered in K.C. Vasanth Kumar and Another Vs. State of Karnataka, . The point posed by Mr. Justice Desai is as follows :

"The controversy now has shifted to identifying socially and educationally backward classes of citizens. The expression "backward classes" is not defined. Courts have more or less in the absence of well-defined criteria not based on caste label has veered round to the view that in order to be socially and educationally backward classes, the group must have the same indicia as Scheduled Castes and Scheduled Tribes. The narrow question that is being

examined here is whether caste label should be sufficient to identify social and educational backwardness ? Number of Commissions have attempted to tackle this complex problem. However, both Mandal Commission and the Havanur Commission of Karnataka and Bakshi Commission of Gujarat have finally accepted caste as the identifying criterion for determining social and educational backwardness, though it will be presently pointed out that Mandal Commission had serious reservations about caste criterion. Most of these Commissions and the Government orders based on their recommendations used communal units to discriminate the backward class. Rane Commission of Gujarat has chalked out a different path, rejecting caste as the basis for ascertaining social and educational backwardness. The question we must pose and answer is whether caste should be the basis for determining social and educational backwardness. In other words, by what yardstick groups which are to be treated as socially and educationally backward are to be identified ? To simplify the question : should membership of caste signify a class of citizens as being socially and educationally backward ? If "caste" is adopted as the criterion for determining social and educational backwardness does it provide a valid test or it would violate Article 15(1) which prohibits discrimination against any citizen on grounds of religion, race, caste, sex, place of birth or any of them."

"26. Therefore a time has come to, review the criterion for identifying socially and economically backward classes ignoring the caste label. The only criterion which can be realistically devised is the one of economic backwardness. To this may be added some relevant criteria such as the secular character of the group, its opportunity for earning livelihood etc. but by and large economic backwardness must be the load star. Why I say this ?"

In para 18 Mr. Justice Chinnappa Reddy states as follows :

"In Kumari K.S. Jayasree and Another Vs. The State of Kerala and Another, it was held that the problem of determining who are socially and educationally backward classes is undoubtedly not simple. Dealing with the question whether caste can by itself be a basis for determining social and educational backwardness, the Court observed that it may not be irrelevant to consider the caste of group of citizens claiming to be socially and educationally backward. Occupations, place of habitation may also be relevant factors in determining who are socially and educationally backward classes."

Therefore caste as a factor is being taken into account for identifying backwardness and is adopted and followed since Independence. Even now it is followed and had not been declared as illegal.....The learned Chief Justice had indicated two tests to be applied in identifying backwardness, they being that they should be comparable to Scheduled Castes and Scheduled Tribes in the matter of their backwardness and that secondly they should satisfy the means test such as the State Government may lay down. In various decisions, referred to therein, the Supreme Court having permitted identifying the backwardness by reference to Caste (which had come to stay in this Country for centuries), as on

date, even in advocating for economic criteria to be taken into account; the induction of reservation for backward classes and Scheduled Castes and Scheduled Tribes in the Constitution in 1950 cannot be characterised as a punishable act as and for which Founding Father of Constitution must be punished, for making that Law with that kind of flaw.

The dialogue relating to this aspect to put it in modest language, oversteps limits of decency and regard for Law. This claim is preceded by repeated assertions that Law of the land led both father and daughter to cheat and commit impersonation. Gullible and rural masses who see films in large numbers will be misled to commit a wave of crimes of this nature, which will not be in the larger interests of Society. There can be no projection in this manner done to disrespect and disregard Laws of the land. To show that offenders get punished, then it will have to be preceded by showing commission of offences but yet within limits.

Hence, when the dialogue has gone to the extent of asking for makers of Constitution to be punished before punishing heroine and her father certainly guideline 2 (vi) (vii) is contravened.

Though learned Advocates appearing for petitioners have claimed that several portions of the dialogue and songs in the film contravene many guidelines, only some of those contraventions which had been taken note of by the members of the various Committees are considered hereunder, apart from what had been already dealt with in the earlier paragraphs. In their lengthy arguments on each and every grievance they have expressed is to be dealt with, it will take 100 more pages. It would suffice to look into one or two points which are vital.

One of the aspects taken into account is that, if the film is exhibited in the present form, it will endanger public order, because it instigates ill feelings and distrust between Forward Castes and Backward Castes including the Scheduled Caste and Scheduled Tribes, and thus the film contravenes the Guideline No. 2(ix). The unanimous view of the Examining Committee was that, in its present form, if exhibited, it will endanger public order. One of the members of Revising Committee had observed. "The overall impact of the film is an exhortation that there should not be any reservation on the basis of caste. This, I fear, will create strong negative response from a section of the public leading to a law and order problem. In the Second Revising Committee, a member had opined, "in the present circumstances the film, if exhibited is likely to hurt the feelings of some group which may endanger public order." Another member stated, "the impact of the film is negative and likely to create law and order problem". Yet another opinion was. that "the impact of the film is negative and contemptuous of backward classes of Society and Christian Community." As stated above, the members in the Revising Committee who recommended for "U" Certificate had orally expressed during discussion that they stick to their view. After the unanimous opinion of Examining Committee was read over to the Revising Committee, how majority simply stuck to their view and how Second Revising Committee approached it, had been already referred to. Except for a single

majority vote, the endangering of law and order and the consequences which flow out of it, had weighed with weighty reasons in the minds of several members. Their weighty opinions which failed by a single vote, in the Second Revising Committee, cannot be brushed aside as if there is not substance in them, when arguments are advanced to plead that this guideline is contravened. As already stated under Explanation 1 to Section 2 of the Act 46 of 1979 any comment expressing disapprobation of the Constitution with a view to obtain an amendment to the Constitution of India cannot be found fault with; but if a powerful medium like films is to be utilised with intentional contrived situations, events and characters, which advocate in a biased and distasteful way, the values and standards of the Society in the matter of provision of concessions to socially backward communities having Constitutional sanctions; then it would lead to clashes between several castes. Already people in the State of Gujarat had suffered immeasurably for a long period on this issue: Several were killed and public properties were damaged. There were agitations in Andhra Pradesh. Tamil Nadu, a, and of tranquillity, by misguided options of some, had experienced in recent past Communal clashes in Tirunelveli District and even recently in South Arcot they have taken place. Valuable lives have been lost. Just now, State of Tamil Nadu is under President Rule. On the eve of elections, invariably caste factors come to play their disgusting role. A surcharged atmosphere develops, when their sensitivities are touched upon in bad taste. When the impact of the films is centred around caste-factor and when the topic has been mishandled; if a breach of law on this factor occasions, then it will have wide ramifications. Already after hearing about certification, and on reading reviews about this film, in magazines and news papers; public agitations have started and sizeable number of them have courted arrests. Posters have appeared for starting an agitation, so as to prevent screening of this film. If the administration fails to foresee properly the outcome of the dissatisfaction already created among Castes and Communities, it would result in public properties and valuable lives of Citizens being lost. How, why and in what manner communal clashes arise is well known to this Country. Preceding and after Independence, it had faced communal problems. Thousands of innocent lives have been lost. Mr. Govind. Swamtnathan, learned Counsel for the petitioner has contended that members of Committee are specialists, who know how to assess the, impact of films. When guideline No. 2(ix) is contravened, the opinions expressed by some specialists have been extracted above. It is only on the basis as done by them; this Court is now looking into this aspect, in finding out Whether there is any substance in the contentions of petitioners. A sizeable number of them have rightly visualised a law and order problem. Even before the film is screened, it has started. The Country is already facing the problem of violence in the Punjab, in West Bengal and Eastern States of India. If the professed claim of the film is intended for National Integration or social reform, is it proper at this juncture to project this problem in an explosive manner, as done in Reel Nos. Hand 15 in the film? Once communal clashes set in, it takes several decades to bring about amity and fraternal feelings among different castes. The reservation policy ought

not to have been shown in the surcharged manner, as done in Court scene. A day may come for reservation policy to be removed, i.e., when equality is achieved, as it ought to be. The Supreme Court had suggested for economic criteria to be thought of Debates can go on. Views can be expressed. Articles are appearing in the newspapers and magazines, and Committees are appointed to investigate into them. All these are done without offending sections of public and they are so done in a manner that the fraternal feelings between different castes and the Communities are not affected so as to lead to a law and order problem. Though it was expressed by minority members that it was likely to happen; it has already started, and certainly will lead to disturbances in public places, in entertainment houses and also spread into streets. In spite of such assessment made, if the film is to be screened and a valuable life is lost, then it is not the producer who would make good the loss. The answerability would lie either on the government or the Court, which in spite of such assessments could be made, permit the film to be screened. This is certainly not an aspect on which a State Could experiment upon. That is why, a special guideline on this aspect is framed. It is not difficult for any producer to make a film on this theme, without wounding the feelings of backward and depressed classes, who were reduced to near animal status, by precepts and practices of Hinduism, and which could only be removed by the Constitutional provisions for bringing about social equality among all Citizens. Hence, endangering of law and order is perceivable because of the climax built over the foundation of the plot rested on fraud, in a distasteful and depraved manner, affecting sensibilities of large sections of general public, who are prone to resort to violence. Bearing in mind Guideline No. 3(ii) the Script-writer, Director and Producer should have fed their ideas to public, without guideline No. 2(ix) being violated.

The next aspect is, Mr. S. Govind Swaminathan, learned Counsel for producer had repeatedly stated that the overall impact of the film must be looked at, as pointed out in K.A. Abbas Vs. The Union of India (UOI) and Another, . The guideline No. 3(i) itself deals with this aspect. It has to be seen whether this guideline is contravened or not. In the Examining Committee it was expressed that "Judged in its entirety from the point of view of its overall impact on the Society, the film is likely to have negative impact on the Society, and that no amount of deletions can reduce the overall, impact of the film." More than one member in the Second Revising Committee had stated that the impact of the film is negative and contemptuous of Backward classes of Society and "it handles a very sensitive subject in a rather provocative manner which may generate resentful feelings in certain sections" and that the Harijan Characters without exception are shown in the film in a bad light.

The analysis hiterto made shows of the manner in which the contrived situations have been inducted in the story and that I.A.S. Officers are inhuman except for the heroine; and that in spite of committing an unpardonable criminal act of creating false certificate, a message is being powerfully fed through this film, that even then no punishment could be visited upon her for such crimes. The

Utopian claims about the British Rule being better than what obtains in Independent India; and that Constitution makers were at fault in conceiving the reservation policy which is an inescapable historical necessity etc., being projected in the later half of the film are intended to poison the minds of large sections of less-informed public that crimes could be committed with impunity, for removing the Constitutional reservations. Even if it is claimed that it was only intended to remove the caste factor from the reservation for backward classes etc. even then, it cannot be championed by resorting to these undesirable practices justifications, crooked reasonings, etc., Having read more than one opinion of the members, this Court considers that, it would not be possible for this Court to put it better than how three enlightened members of the Second Revising Committee had observed as follows :

".....It was an intentional presentation of situations, events and characters which advocated, in a highly biased and distorted way, the values and standards of our society in the matter of provision of concessions to the socially backward communities having constitutional sanction. The attempt of the film is to emphasise how a Brahmin individual (and caste) suffers because of grant of privileges to the socially handicapped. The so-called appeal in the film India is one is a hollow appeal, which in effect touches caste sensitivity of the Brahmin-Forward Caste, The Harijan characters, without exception, are shown in the film in a bad light. The I.A.S. Officer is portrayed as extraordinarily efficient and a high achiever by doing personal humanitarian gestures towards a few individuals, implying that generally I.A.S. Officers are inhuman."

On seeing the film, even though there is no vulgarity, sex exploitation, etc., yet the film after interval degenerates and thereafter guidelines get contravened, and thereby earlier part of it becomes ineffective. Hence, while seeing the film in the perspectives of Clause 3(i) and (ii) the conclusion is that, the film has a negative response affecting sensitiveness between different Castes and Communities and the estrangement to follow would assume monstrous dimensions in this state, because of the contemptuous manner in which the main theme is claimed in the Court scene. Therefore, the inescapable conclusion is, if it is exhibited in this form, it will be adverse to their interests.

One another aspect which has to be necessarily touched upon is that, the heroine and her father have created a false community certificate and thereby cheated Government and yet benefitted out of it. Yet they claim that it is because of wrong they did it. Ultimately they get absolved of the crime committed by them and much worse, she is glorified in the concluding "scenes and continues to function as an I.A.S. Officer". One of the members of the first Revising Committee has observed that "also an I.A.S. Officer has been shown as having committed serious crime, and the Government under pressure of some section of people released her free." A member who suggested "A" Certificate has stated, "the story is based on fraud, where a false certificate is put by a Brahmin girl as Harijan girl, to get admission for further studies in colleges...." It is needless to

elaborate upon this point, because no cultured, responsible citizen having respect for Rule of Law or regard for morale in Services would conceive a basic plot in the story to be based on fraud, impersonation, cheating etc and yet justify the crime. No member of the public can ever be made to think that an I.A.S. Officer could continue to hold the office, in spite of an open admission that he had committed a crime punishable under Indian Penal Code. Mr, Ramakrishna quite rightly states that, the film depicts that a person in power or authority could commit forgery, conspiracy, cheating by impersonation etc., and still would be allowed to have the benefit of the crimes committed by him. Youngsters who see the film are likely to follow the message sent through this film, as an approved or certified message, cleared by Censor Board and Central Government. Even matured people do get misguided and commit crimes in the same manner as depicted in films, and when apprehended, confess that a particular film gave him the idea to do the crime. Misguided young minds are prone to resort to crimes called as white-collared crimes of this nature. Already there are proceedings in Courts relating to false certificates obtained to these benefits, and where ever detected they have been removed from service and punished severely. Not only the offender is glorified in the film but she is shown to continue to function as an I.A.S. Officer. In every film the criminal is shown as punished adequately, and yet why Censors cleared this film as if these criminals should not be visited with punishment? Strangely the dialogues are to the effect that they find fault with the Law and not with those two offenders. Why show that she should continue as I.A.S. Officer? Is it to advocate a Social reform? Is it for national integration? Is it to uphold Rule of Law? Is it to replace caste ridden society by a Society of specialised criminals? Justify their actions by asserting that the law is erroneous and that it was the Law that made them to resort to falsehoods and hence they are not criminals. Hence, there could have been no condonation for such persons. Therefore under such circumstances, no Government would subscribe to this logic portrayed and preached with vehemence in the concluding stages of the film. This sort of depiction would undermine the Rule of Law and in turn the Security of the State.

One of the topics touched upon, is song No. 7 and the grievances made is that, the song carries the message to impress upon depressed classes that they should continue with their family professional pursuits, which is nothing but for revival of the out dated retrograde Caste divisions. The defence put forth is that, this song should not be taken out of context and the conversations preceding and following it would go to show, that emphasis is laid for their children to go to school and that no one should prevent a child from being educated. When a film is certified, the song for the film also gets approved and publicised. It is common knowledge that there are many films which run only for one or two weeks but catchy songs are being played for several years. Even State medium, for decades plays them. What preceded or what followed it, win not be available to large sections of public, when they hear the songs. Social, political, educational religious messages etc., are being carried on day and night through the medium

of songs with their catchy tunes. Knowing quite well that the comparative duration of a film being exhibited is less, considerable emphasis is laid on songs, for ever so many purposes. Therefore, it must be seen, whether within the song itself, the proper answer is found. If there is a message which is not proper, then it has to be removed. This song concludes that a downtrodden boy should not aspire for education and that he should also be a cobbler, because his parents are cobblers. Then this is the only message which will be heard in far off villages, and will in turn inject in the minds of the elders, that education is not required for their children. It must be remembered, that, as on date, even the well informed educated lot are impressed by what are put through films. It is not uncommon in this State, to accept messages fed through this medium as divine messages. Hence they have to be correct. Therefore, in the peculiar backdrop in this State, there is some substance in the claims of the petitioners that there is a poisonous message which would dissuade the less informed elders of depressed classes from educating their children. Both the counsel for petitioners contended that this is the "Kulachara" policy which had the baneful effect in depriving major sections of Hindus from acquiring 3 Rs. for Centuries and it is now advocated through this song. They also added that, this was attempted to be introduced by the administration at a point of time but had it to be withdrawn, because of large scale public agitations and that Government also fell in no time. This point can be comprehended only by those acquainted with what has happened in this State and why people in Tamil Nadu alone will get agitated, if this system is advocated. This is what guideline No. 3(ii) wants Censors to bear in mind. According to them, this is the poisonous intention in formulating the song, for restoring the concepts which had been buried by the dynamic leaderships of Mahatma Gandhi, Dr. Ambedkar and E. V. Ramaswamy Naicker and host of other reformers. Having dealt with so many other aspects, it is time enough not to go deeper into these aspects, except to state that this song could be looked upon with misgivings by people to, when this film-relates. Within the song itself, in this context, the clearest answer ought to have been given.

On the total impact of the film, certain peculiar factors will have to be taken into account because of guidelines 3(i) & (ii). This film is in Tamil. It deals with reservations now extended to large sections of people on a particular basis, and who have suffered for Centuries, and at a time when they have not attained equality and when their valuable rights which are secured under the Constitution are attempted to be taken away, they get agitated. This film taken in Tamil for Tamil population on being screened in Tamil nadu, will certainly be viewed in the background of what had happened in Tamil Nadu during the preceding four decades, and the reactions are bound to be volatile. A film dealing with aliens problem in Assam, if taken in a manner of generating adverse reactions and shown in the Southern parts of India, it would not generate the same turbulent reactions as what would be in that State. If it is shown in Assam, then guideline No. 3(ii) had not been borne in mind by Censors. If this film is viewed by an audience, who do not know Tamil and who do not have any knowledge of how

Tamils will react to certain factors, and if they see only with Titles reducing it to a silent picture for them; there are patches in the earlier part of film with certain cover up claims of social changes to take place. It is not uncommon to introduce sequences and certain objectionable dialogues in plays and films in a veiled manner to get over objections of Censors. This is not a film in which every foot of it deserves to be removed. A film has to cater to the tastes of different kinds of people, and therefore different topics are touched upon, before the film reaches its finale. Hence, what is the ultimate reaction when the film is concluded, and whether because of it, it is not entitled to Certification, depends on how in that strata of Society in which it is shown, it would not offend them, is the crucial factor. This is what guideline 3 (ii) requires to be looked into.

It is only Reel Nos. 14 and 15, which takes away, whatever normalcy exists in putting forth certain other topics dealt within a minor manner. In these days, when several Tamil films are not successful, one is likely to think that it is more of a documentary than a feature film. But, when the film reaches its climax; the nature of foundation which had been schemingly laid in the earlier parts by touching upon social reforms, goes exposed, and what remains is a reaction, which would and which could be no different from what large scale disturbances happened when G.O. on economic criteria was made applicable only to the same classified backward classes, Scheduled Tribes and Scheduled Castes, was introduced. Assertions that it is the law which was responsible for their committing of Crimes, should never be allowed by Censor Board, in any form; because it would be against the interests of the General Public. Any denigration of Rule of Law, would never bring orderly Society. To preach that it is only law that prompted them to utter false hood and in its absence they would not have done it, is a wrong way of presenting a view point. There are several other fair ways of pleading for change in Laws of this Country. But, this manner of depiction by finding fault with Law repeatedly in the film, leaves behind an impression that it is intended to disturb tranquillity among Tamils. The crux of the film is that, the reservation made in the Constitution was unjust, unfair and antipeople. The advisability of introducing economic factor as well, in assessing backwardness; could certainly be advocate, but not presented in the manner done in this film. It could certainly be re-edited and the plot laid redone, by removing Reel Nos. 14 and 15 and without showing that offenders are not punished etc. The total impact is determined by Reel Nos. 14 and 15 apart from some portions preceding them.

No case ends without several tail-end points of minor nature, and this matter is no exception. One such is that, Dr. Ambedkar is offended in the film. The heroine enters the house on assuming charge as Collector and the B.D.O. (her father) shows a picture of Dr. Ambedkar on the wall in the house, and states that he has put the picture, because she would like it. She then states that he is one who could not be liked by her alone but by all, when he had laboured and toiled for right causes. Then she exclaims in English,

"He worked for the poor, not for the par"

It is contended by petitioner's counsel that the real intention is to denigrate him by stating that he never stood for equality among Castes, when this framer of the film affects the entire lot of depressed classes of people. He had in the course of his submissions of 10 points touched upon certain aspects of embarrassing nature relating to certain Constitutional functionaries, and this Court considers that, there is no need to approach this matter in that perspective, in the view taken above.

When Censor Board grants Certificates, in every film, it must avoid any depiction of any procession being taken to Courts and of organising agitations inside or outside Court premises and the like. In the concluding stage of this film, a torch procession is taken in night to reach the Court premises. If the demand is against the State for prosecution, then the organising of procession should not have been taken to Court. No visualisation could ever be made to intimidate Court proceedings. It is highly improper to inculcate in the minds of the public that, any illegal claim or demand resolved by them, could be forced upon Courts, by organising procession had strived for equality for every one. On behalf of the producer, it is stated that, there is a blatant error committed in hearing this dialogue, because what she had stated is that

"He worked for the poor and not for power".

nearly three times this portion was replayed, and the word is pronounced as "par. In the original script handed over by the produce it had been typed in Tamil as follows :

(Vernacular omitted -- Ed.)

Later on it stands corrected as (Vernacular omitted -- Ed.) this shows that the producer had played trick to make her pronounce it as "par", and while giving script, has written inconsistent words. The script writer, if really had intended to praise him, could have used several clearer expressions. This objection, as taken, is sustainable.

Mr. Kandasami Singh appearing in person by filing an unnumbered CM.P. has advanced certain points by claiming that he being a member of the public, he is entitled to be heard, when the topic involved in the agitations, either inside or outside Court premises. A circular to this effect will have to be issued in the interests of Rule of Law.

On what had been stated above, apart from considering the several breaches of categories of guideline No. 2, the film had been seen bearing in mind the directions in guideline No. 3. The film as now made, for the reasons stated above, deprives itself of the right to hold the Certificate issued on 7-12-1987 under the Cinematograph Act, 1952. This Court considers that, this is not the type of film in which no part of it could be ever used for public exhibition. Considerable portions of it, could still be easily utilized in remaking it, by

discarding offending portions, which had landed 5th respondent in this situation. Government of India for several decades, had been preparing documentaries, to bring about social reforms, to educate people to imbibe dynamic changes to build a Secular India etc. The 5th respondent having taken this task of propagating reform, ought to have adhered to the same standards, in which event, the film could have been screened long back. Any person who wants to utilize this medium to bring about change in Law or to get Constitution amended or change the Government policy, will have to do that with considerable restraints, failing which it will affect the sentiments of large sections of the public. It could never be done in a manner, which will lead to endangering law and order and disrupt tranquillity and fraternal feelings between different sections of the Indian public. Certainly, the producer, like any other Citizen could champion for any just cause. Like guardedly written articles without inciting passions among people, he ought to have dealt with the topic in the film, in aiming for revocation of reservation policy. If it is for induction of economic criteria, practically there could be no difficulty whatsoever in asking for it in this medium, in the same manner in which it is going on, in publication of articles, or making speeches, etc.

Therefore, a declaration that the Certificate issued to fifth respondent dt. 7-12-1987 is invalid, will not prevent producer from applying for Certification, after removing such portions which had denied him the Certificate. Having invested in the film, by this enablement provided, and which could bring it within the guidelines under the Act, it is a just and fair manner of resolving the situation now faced by him. Hence, the censor certificate issued to 5th respondent is hereby revoked,

Though in W.P. No. 1166 of 1988 the writ petition is filed for the relief for writ of Prohibition, it has been clubbed with writ petition No. 1181 of 1988 in which writ of Mandamus is asked for revoking the certificates. It is held in Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, that court can always mould the relief.

Both the writ appeals are allowed, granting the same relief as indicated above without costs.

An oral plea for leave to Supreme Court is prayed for. But, as the matter does not involve any substantial question of law of general importance, leave is refused.