
(2003) 07 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1815 of 2002

Shyam Narayan Chouksey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Cinematograph Act, 1952 — Section 5A

Constitution of India, 1950 — Article 51A

Prevention of Insults to National Honour Act, 1971 — Section 3

Citation : AIR 2003 MP 233 : (2004) 97 CLT 201 : (2003) 2 MPJR 323 : (2004) 3 MPLJ 216

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : V.K. Tankha, General, Vijay Paney, for the Appellant; R.S. Patel, Senior Standing Counsel, for Nos. 1 and 2, Anjali Banerjee, for No. 3, Surendera Singh, for Nos. 4 and 5 and S.K. Yadav, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In the days of yore it was vocally pronounced with immense emphasis that a drum beat may travel to a maximum limit of four miles but the utterances made by one man, through men, is capable of reaching people who are thousand miles away. The medium of man's expression has no limitation. In the modern world the media has irrefragably earned the status of inevitable and indispensable fourth pillar. Freedom of speech and expression has gained immense significance and its utility, by no stretch of imagination, can ever be marginalised and its importance be reduced but, an unavoidable and significant one, there are certain limitations which are imposed by law within the permissible, reasonable or rational, acceptable and non-arbitrary limits. Cinema as a medium of expression and as a mode of entertainment has reached an enviable status in the scientific world. The Indian cinema has a different conception from its inception inasmuch as myths, historical events, poignant novels, moving stories, autobiographical

novels, biographical sketches along with melodious songs have dominated the silver screen. Some recall with fondness the historical beginning when Dada Saheb Phalke introduced the Indian audience to the modern medium in an innovative method and that is when the silent era of the moviedom came into being in India. Needless to state, at that point of time, the pioneer of Indian cinema could never have harboured the thought in the farthest quarters of his mind that a day would come when cinema, a versatile audio-visual medium would lead to a controversy when many a question would arise to be adjudicated in a public interest litigation being preferred by a retired officer of the State Government as pro bono publico to agitate the grievance relating to the use of the National Anthem in the depiction of the narrative -- a motion picture. At this juncture, we may state that in the case at hand it has become imperative and incumbent on our part to deeply penetrate and to appreciate applying the roving logicity of the quintessential facet of perceptual shift pertaining to commercial use and dramatisation of the National Anthem of our country Bharat, "Bharti Yatra Santatih" in the film namely, "KABHI KHUSHI KABHI GUM".

Cinema has been described in Chamber's Encyclopedia as an abbreviation of cinematograph or kinematograph. It has also been mentioned therein that broadcasting excepted it is the youngest of the arts, having developed from rudimentary beginnings to a high level of aesthetic and technical achievement within the first half of the 20th century and becoming one of the most popular and cheap forms of entertainment. The cinema is regarded as an art and initially it was trick photography. With the passage of time certain story films were contrived and there was no sound. In the third decade Talkies" arrived. In the year 1926 introduction of sound transformation and both, technical and economical form of film production took place and slowly colour photography was introduced and factors in size and quality of the image changed.

We have devoted some space to the concept of cinema as the whole controversy, in the case at hand relates to picturisation and projection of an important scene in the celluloid. The portrayal in its entirety is neither surrealistic nor in the silhouette background. The whole thing is direct, like an arrow, piercingly moving, having the requisite impact. We have to deal with such a situation in the bedrock and anvil of existing law.

Once we penetrate into the sphere of any medium of mass communication, the concept of democracy, sovereignty, patriotism, nationalism and collective good emerge, some rise like phoenix, some are immediately vibrant. One remembers the saying by Adli Stevenson that patriotism is not short and frenzied outburst of emotion but the tranquil and steady dedication of life time. One is also reminded that freedom is not caprice. And further, democracy is word of disciplining oneself so that one need not be disciplined by others. Thus discipline is the sine qua non for democracy though one may conceive the notion that right to do a wrong is the part of democracy.

Presently we shall advert to the factual score. The petitioner is a member of

certain social and spiritual organisations and has taken upon himself the burden of canvassing national temper and launch a campaign, in the name of the "Jeevn Jagriti Prayas" to inculcate national spirit amongst people. As put forth, he had gone to see the film "Kabhi Kushi Kabhi Gum", produced and directed by Mr. Yash Johar and Mr. Karan Johar, the respondents Nos. 4 and 5 respectively. While viewing the said movie the petitioner found that in a particular portion the background of the film is set in London and the child, the son of the main protagonists, sings the National Anthem of India in the school function. The petitioner found that there was no reaction in the audience seeing the picture when the National song was sung, but only few including the petitioner responded by standing up to pay respect. The other viewers remained seated, blissfully ignorant and unaware of their duty. The petitioner's standing up was objected to by the people who were sitting behind him and in fact, they complained of obstruction. As he could not swallow the hidden indifference and outright insult to the national honour, he went to the Manager of the theatre, namely, Jyoti Theatre, where the movie was exhibited, narrated his experience and the people's response. He invited the attention of the people by staging "Satyagrah" outside the theatre. He put banners to make the people conscious of their Constitutional obligation. In not finding any positive response he brought the matter to the notice of the functionaries of the local administration including the Superintendent of Police and the Director General of Police, Madhya Pradesh, who assured him that necessary action would be taken. The authorities, as learnt by the petitioner have issued instructions to all the districts of Madhya Pradesh. The petitioner, as set forth, got handbills printed at his own and distributed the same amongst viewers to make them aware of the National Anthem in the film, requesting them to pay necessary respect as desired in law. The adroit attempt of the petitioner did not have the requisite impact.

It is contended in the writ petition, such a situation would not have arisen had the Censor Board of Film Certification would have been more careful and circumspect before permitting the public screening of the film. As a conscientious citizen he submitted representation to many authorities and sent a legal notice to the respondents. A copy of the legal notice has been brought on record as Annexure P/5. The views published by other respectable citizens of the country have been brought on record as Annexure P/5A. In the writ petition reference has been made to Article 51A of the Constitution and to the provisions enshrined under the Prevention of Insults to National Honour Act, 1971, (for brevity "the 1971 Act"). There is also reference to the executive orders issued by the Union of India relating to the National Anthem. It is averred in the petition that if the provisions are read and appreciated in proper perspective there is no room for doubt that there should be no commercial use of the National Anthem. The manner in which the National Anthem has been depicted in the film has been seriously criticised in the petition by contending that the respondents No. 4 and 5 have really not cared to keep the safeguards and the protection of constitutional duty in mind when singing of the National Anthem has been picturised. The

petitioner has also asseverated that the Central Board of Film Certification (in short "the Board"), respondent No. 3, herein, has not kept in view the law, in the field and executive instructions issued by the Union of India and has granted the certificate for public screening. It is urged that the National Anthem has been picturised not for creation of any creative necessity and the same has been done in violation of the norms and hence, the duty cast on the respondent No. 3 has not been fulfilled as mandated in law. In this backdrop a prayer has been made to issue a writ in the nature of mandamus or any other appropriate writ directing respondents to immediately prevent the commercial use of the National Anthem in the film and to appoint a committee of experts for viewing the film and to necessary action against the respondents for commercial use and alternatively if the Court is of the view the National Anthem is permissible to be sung in the film then necessary directions should be given to the respondents No. 3 and 4 to ensure that necessary caution be given and flashed before signing of the National Anthem so that audience may be aware of the duty to pay proper respect.

A counter-affidavit has been filed by the respondent No. 3 contending, inter alia, that the film in question was previewed by the Examining Committee as per the provisions of Section 5A of the Cinematograph Act, 1952 (for brevity "the 1952 Act") and the Committee recommended for grant of "U" Certificate to the film with certain conditions as putforth in the reply, they relate to deletion of certain visuals and dialogues occurring in Reel Nos. V, X and XI. It is putforth in the counter affidavit that the Examination Committee did not find any objectionable aspect with regard to singing of the National Anthem in the film and, therefore, the Certificate was granted. There is neither commercial use of the National Anthem, nor any kind of disregard or disrespect shown thereto. It is setforth that the main contention of the petitioner is that while the National Anthem is sung during course of the film viewing, audience should stand up from their seats to pay respect to it. A film cannot tailor the reaction of the public towards the National Anthem. It is averred that certification of the film by the said respondents does not violate any of the end of the general principles laid down for the purpose of examining of films for being certified as "U" category film and full care and caution have been taken while previewing the film in granting the certificate. It is pleaded that issuing prior intimation before singing of National Anthem is bound to hamper the flow of the film and hence, it is not possible for the Board to do such a, thing inasmuch as it is not within the jurisdiction of the Board to make audience of India to stand up in honour of the National Anthem and to react in a particular manner. As per the stand of respondent No. 3, if the film is seen in its totality, it instills partriortism for India. During course of viewing of the film it is not feasible and convenient for Indian audience to stand up while the National Anthem is sung in the film as that would create law and order problem for the local administration within which jurisdiction the film is exhibited. According to the Board there, has been no lapses on its part and there has been no violation of any of law in grant of such a certificate for exhibition. The stand that the National Anthem has been used for commercial purposes, has

been refuted. With regard to legal notice issued by the petitioner it is stated that a reply was sent vide Annexure R3/1. It is the stand of the respondent No. 3 that it is the duty of a law abiding citizen to stand up in honour when the National Anthem is being sung and the contention that depiction of singing of National Anthem in a sudden manner, without prior indication would not be proper as the same would hamper the flow of the film. It is also put forth that even after giving prior intimation regarding depiction of signing of the National Anthem one is not sure as to whether its honour, spirit or respect would be maintained by the entire audience till the end of signing of the National Anthem. Reliance has been placed on the provisions of the 1952 Act to show that there was no justification in not granting the Certificate inasmuch as signing of the National Anthem in the movie glorifies the National Anthem trying to exposit the sense of patriotism.

A rejoinder affidavit has been filed by the petitioner to the counter affidavit filed by the respondent No. 3, wherein it has been asserted that the National Anthem is not just another patriotic song. The National Anthem of India has been accorded special status and, therefore, it has a unique place in the heart of every Indian citizen. It symbolises the national honour and pride. It is put forth that honour and dignity of the National Anthem cannot be taken up lightly in the causal manner making it the subject of cheap drama. Reference has been made to the instructions issued by the Ministry of Home Affairs, where the National Anthem is sung. It is put forth that commercial use of the National Anthem in a commercial film is not permissible and the Board has simply denied the allegation of the commercial use without giving any justification. It is also highlighted that the National Flag cannot be utilised for commercial purpose and the National Anthem also Cannot be taken aid of commercial advantage. Various aspects of picturisation have been commented upon and it is also put forth as to how writing a line of caution when the film is exhibited would not create any distraction. The stand of the Board that it would hamper the flow of the film has been refuted. It is also contended that there has been interpretation while signing the last line of the National Anthem in the film and there is addition of the word "sorry", as a consequence of which orderly singing of the National Anthem is affected. It is also pleaded that the manner in which the National Anthem has been depicted is clear example of anti-national attitude and the respondent No. 3 has failed to discharge its duty by permitting public screening of the film. Various other aspects have been stated in the rejoinder affidavit to show that screening of the questioned scene does not enhance the sense of patriotism but on the contrary, has immensely hampered it.

The writ petition was taken up for hearing and in course of hearing the petitioner sought our permission to address us to which the learned Counsel for the respondents did not raise any objection. On the date of hearing, after hearing the petitioner for some time, we thought it appropriate to see the particular scene where the National Anthem has been sung in the film. Learned Senior Counsel appearing for the respondents No. 4 and 5 assured this Court that he would make all arrangements for seeing the said scene of the film. Accordingly, we saw

the movie on 3-7-2003. On that date we referred to the earlier order and thereafter passed the following order :

"(a) Before the National Anthem was sung by the child, the son of the main protagonist, there is an expression of appreciation by the parents and the mother gets indulged in whistling for inspiration of proper performance of her son.

(b) The mother says the child will be singing a song from the film. "The sound of music", an English movie, which was produced decades back.

(c) The child, a student of Class IV, makes an announcement to the following effect "THIS IS FOR YOU MOM".

(d) There is an expression of nervousness by the mother which has been taken cognizance of by the father and they sit, in a mood of apprehension.

(e) The child starts signing the National Anthem of India.

(f) The parents of the Child, his father's brother and mother's sister get up immediately.

(g) On seeing the Indian citizens getting up other people who have been watching the programme get up in a phase wise manner. Some people get up after a line, some after two lines and some after three lines after the National Anthem had commenced.

(h) While the National Anthem is sung by the child the parents express their feelings in an apprehensive manner, but such an apprehension has been shown by facial gesture with movements.

(i) Thereafter the child forgets the last part of the National Anthem and says "sorry" on them microphone. The mother of the child completes the last five words of the anthem."

Thereafter the matter was listed for hearing,

We have heard Mr. Vijay Pandey, learned Counsel for the petitioner as well as the petitioner on consent of the learned Counsel for the respondents and Miss Anjali Banerjee, learned Counsel for the respondent No. 3. Mr. R.S. Patel, learned Senior Standing Counsel for the Union of India adopted the arguments put forth by the learned Counsel for the respondent No. 3, Mr. Surendra Singh, learned Senior Counsel addressed us on behalf of the respondents No. 4 and 5. We have also heard Mr. V.K. Tankha, learned Advocate General for the State. We also had the assistance of Mr. S.K. Yadav, learned amicus curiae.

Mr. Pandey, learned Counsel for the petitioner has submitted, that use of the National Anthem in the film has eroded public sentiments at large and, therefore, the same should be deleted from the movie. It is urged by him that there should have been a fore-warning or write-up requiring the audience to stand up to pay respect to the National Anthem and as the same has not been done, it has caused insult to the National Anthem and hence, the. Board has failed in its duty

in granting the certificate. The learned Counsel as well as the petitioner has contended that the suddenness of the introduction of the National Anthem creates a shock in the audience as a whole and the audience is not in a position to react and this tantamounts to insult as no National Anthem can ever be sung anywhere as a surprise item. It is also put forth by them there has been commercial use of the National Anthem which the law relating to the singing of the National Anthem, if appreciated in proper perspective, is not permissible. Reliance has been placed on the decision rendered in the case of *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, .

Miss Anjali Banerjee, learned Counsel appearing for the respondent No. 3 has contended that the petitioner has failed to appreciate the real purpose behind the depiction of the scene and has understood it in a different manner without any rhyme or reason. It is urged by her that the examining committee of the Board had carefully gone through the every facet of the motive and directed cuts in respect of certain scenes keeping in view the provisions of the Act, Rules and guidelines and in the portrayal of the scene in question, the Committee did not find any thing objectionable and hence, the grant of certificate in favour of the movie can not be flawed. It is also urged by her that the Board has carried out its obligations in a most dutiful manner but the petitioner has unnecessarily dragged the Board to a litigation of this nature and alleged collusion for no manifest or apparent reason. It is contended by her that, allegation that the National Anthem has been used for commercial purpose is not correct and, therefore, the petitioner is not entitled to any relief.

Mr. Surendra Singh, learned senior Counsel appearing for the respondents 4 and 5 has contended that the petitioner's individual sentiment might have been hurt but no law has been violated in the grant of certificate by the Board and, therefore, the emotional outburst of the petitioner should not be taken cognizance of by this Court. It is urged by him that the depiction of the scene exhibits a bona fide feeling of the Producer and the director and in fact the portrayal exhibits a sense of committed nationalism, laudable patriotism and expansion of the Indianness in a foreign country and, therefore, the allegation that it has been used for commercial purpose, is a figment of imagination of the petitioner and not supported by in any manner whatsoever. Mr. Surendra Singh, learned senior Counsel has also submitted that the instructions which have been given by the Union of India clearly postulate that when the National Anthem is sung in a film there is no necessity that audience should stand up and, in this backdrop the plea canvassed by the petitioner is absolutely unfounded. The learned senior Counsel has further argued that the National Anthem is a song of celebration and a popular expression of the populace and a joyous expression of the multitude of the great country and the conception of the petitioner that it has been dramatised and there has been some irregularity in its singing do not really show any kind of disrespect to the National Anthem or violate any kind of prohibition envisaged in law and in the absence of the same writ Court should not interfere, The learned Counsel has canvassed that in the case of *Bijoe*

Emmanuel and Others Vs. State of Kerala and Others, it has been observed by the Apex Court that the respect has to be shown and in the case at hand there is no disrespect to the singing of the National Anthem. It is proposed by him that the audience who are present in the film when the National Anthem is sung are different than the audience who are present in the cinema hall as there is a basic distinction between the audience in the film and audience watching the film. It is further propounded by him that the audience in the film watching the function in the school in honour of the National Anthem of India do stand up and show respect and there is no disrespect shown as putforth by the petitioner. Replying to the submission with regard to the interruption by utterance of the term "sorry" it is contended by them that it is quite natural for a young boy to forget and when naturalness of an incident is projected in a most natural manner it can not be found fault with as art reflects life and life, in a way, mirrors art.

Mr. V.K. Tankha, learned Advocate General for the State who has watched the movie when it was shown, and assisted us, in his turn contended that when National Anthem is sung proper respect has to be shown but unless there is violation of any law no exception can be taken to it. It is proposed by him that the manner in which the National Anthem has been picturised is unexceptional and such an event may occur in real life and if the film has portrayed the art being true to life the same should not be regarded as flawed. It is contended by Mr. Tankha that when the National Anthem is sung in a film it may not be possible for the audience watching the film in the hall to stand up though it would be a welcome phenomenon to do so. It is putforth by him that the question whether National Anthem can be introduced in a movie in a circumstance of this nature, is within the decision taking process of the Board and when no guidelines are there prohibiting such depiction at this point of time a writ should not be issued but a direction may be given for framing of the guidelines in that regard so that the Board may act in appropriate manner in future.

Mr. S.K. Yadav, learned amicus curiae has submitted that the laudable purpose which has been putforth by the learned senior Counsel for the respondents 3, 4 and 5 is in fact, not perceptible inasmuch as behind the exposition of the scene there is a motive of drawing more audience which has enhanced commercialisation in it and even by stretching the idea of liberalisation it can be ignored. It is urged by him that a National Anthem of the country cannot be utilised in a school variety show and school cultural programme whether the school is situated in India or abroad and a plea cannot be advanced that the foreign audience who had participated during the shooting of the picture have understood the National Anthem and by that way there has been higher respect paid to the National Anthem. His further proponement is that National Anthem can not be a tool of advertisement and once it becomes a facet of commerce, per se, there is disrespect and dishonour and it violates the public policy of the country. Pyramiding the submission, the learned friend of the Court has putforth that such a depiction may not or may tantamount to criminal offence as defined

under the 1971 Act, it would stand in a different footing when permissibility of such picturisation and exhibition in a feature film is under scrutiny.

If the respective submissions which have been raised at the Bar are taken into consideration and weighed in proper perspective in our considered opinion two questions emerge :

(a) Whether the certificate granted by the Board for permitting the exhibition of the film with the National Anthem is correct and sound and is in consonance of law governing the field keeping in view of the manner in which the picturisation of the sequences has taken place ?

(b) Whether audience watching the film in the cinema hall should stand up when the National Anthem is sung in the film ?

We may state here that in this context the issue of indicating or mentioning in writing on the screen by the producer and the director to the effect that the National Anthem is going to be sung and the audience should stand up should be written or not is covered.

We shall deal with the first facet first. To understand and appreciate the controversy in issue, we are inclined to think that it is necessitous to understand the concepts of national feeling, symbolic purpose, the attached dignity, sense of popularisation and ingredient of patriotism and quintessential facet of honour which are insegregably and inseverably connected with the National Anthem. The National Anthem is the glory of the nation. It is an expression of sovereignty of India. In this context we may profitably refer to the Statement of Objects and Reasons to the Prevention of Insults to National Honour Act, 1971 (Act 69 of 1971) :

"Cases involving deliberate disrespect to the National Flag, the National Anthem and the Constitution have come to the notice in the recent past. Some of these incidents were discussed in both the Houses and Parliament and members expressed great anxiety about the disrespect shown to the national symbols. Government were urged to prevent the recurrence of such incidents. Disrespect to the National Flag and the Constitution or the National Anthem is not punishable under the existing law. Public acts of insults to these symbol of sovereignty and the Integrity of the nation must be prevented. Hence the Bill. The scope of the law is restricted to overt acts of insult to and attack on, the national symbols by burning, trampling defiling or mutilating in public. It is not intended to prohibit honest and bona fide criticism of the symbols, and express provisions to this effect have been made in the Bill."

(Underlining is ours)

The aforesaid makes it graphically clear that the National Anthem is the symbol of sovereignty and integrity of the nation. The Government of India, Ministry of home Affairs issued orders referring to the National Anthem of India. The said order in Clause 1(1) deals with the full version of the National Anthem and

stipulates that play time of the anthem is approximately 52 seconds. Sub-clause (2) of Clause 1 provides the short version of the National Anthem and playing time of the same is about 20 seconds. Sub-clause (3) stipulates about the occasions on which the full version and short version would be played. Clause II deals with the playing of the anthem. On a perusal of the same it is apparent that the same deals with the ceremonial occasions. Clause III deals with the mass singing of the anthem which reads as under :

"III Mass Singing of the Anthem (1) The full version of the Anthem shall be played accompanied by mass singing on the following occasions.

(i) On the unfurling of the National Flag, on the cultural occasions or ceremonial functions other than parades. (This could be arranged by having a choir of adequate size, suitably stationed, which would be trained to co-ordinate its singing with the band etc. There should be an adequate public audition system so that the gathering in the various enclosures can sing in unison with the choir);

(ii) On the arrival of the President at any Government or Public function but excluding formal State functions and mass functions and also immediately before the departure from such functions.

(2) On all occasions when the National Anthem is sung, the full version shall be recited accompanied by mass singing.

(3) The Anthem may be sung on occasions which, although not strictly ceremonial, are nevertheless invested with significance because of the presence of the Ministers etc. The singing of the Anthem on such occasions (with or without the accompaniment of an instruments) accompanied by mass singing is desirable.

(4) It is not possible to give an exhaustive list of occasions on which the singing (as distinct from playing) of the Anthem can be permitted. But there is no objection to the singing of the Anthem accompanied by mass singing so long as it is done with due respect as a salutation to the motherland and proper decorum is maintained.

(5) In all schools, the day's work should begin with community singing of the Anthem. School authorities should make adequate provision in their programmes for popularising the singing of the Anthem and promoting respect for the National Flag among students."

Clause IV deals with the playing of Foreign Anthems. As immense emphasis has been placed upon Clause V, we may profitably quote it :

"V-General

(1) Whenever the Anthem is sung or played, the audience shall stand to attention. However, when in the course of a news-reel or documentary the Anthem is played as a part of the film, it is not expected of the audience to stand as standing is bound to interrupt the exhibition of the film and would create

disorder and confusion rather than add to the dignity of the Anthem.

(2) As in the case of the flying of the National Flag, it has been left to the good sense of the people not to indulge in indiscriminate singing or playing of the Anthem."

It has been brought to our notice that Government of India on 12th March, 2001 has issued the instructions to Chief Secretaries of the State Governments and Union Territories that the orders relating to the national anthem and flag do not have the statutory back up and they are guidelines and advisory in nature and in the said correspondence certain clarification have been mentioned about the singing in schools. We have already mentioned that they are the set of guidelines. Before we proceed further what is required to be done while singing the national anthem we would like to refer to the provisions of the Cinematograph Act and Rules framed thereunder and guidelines issued thereby. Section 5A deals with the certification of the film. Section 5B provides principles for guidance in certifying films. Section 5B is relevant for present purpose. The same is reproduced below :

5B(1). A film shall not be certified for public exhibition, if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interest of the sovereignty and integrity of India, the security of the State, friendly relation 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.

(2) Subject to the provisions contained in Sub-section (1) , the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under: this Act in sanctioning films for public exhibition."

Section 8 confers power on the Central Government to make rules for the purpose of carrying into effect the provisions of the Chapter II which deals with certification of film for public exhibition.

..... Section 16 empowers the Central Government by notification in the official Gazette to make rules. The Central Government has issued a set of Rules called Cinemato-graph (Certification) Rules, 1983. Sub-rule (ix) of Rule 2 defines feature film. The same reads as under :

"(ix) "feature film" means fictionalised story film exceeding 2000 metres to length in 35 mm or corresponding length in other gauges or on video."

Form 1 appended to the Second Schedule under column (2) requires the applicant to state whether the film is a newsreel/documentary/scientific/ educational/feature/ advertisement film. Form VIII deals with the report of the members of examining/revising committee. It requires the Board to study the guidelines issued by the Government before purview of the film. At this juncture, it is pertinent to state that the Government of India on 6th Dec. 1991 in exercise

of powers conferred by Sub-section (2) of Section 5B of the Cinematograph Act in suppression of the earlier notification has issued guidelines. Clauses (1) to (3) of the said notification are relevant for our present purpose. Hence, we reproduce them :

"1. The objectives of film certification will be to 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;

(c) certification is responsive to social change;

(d) the medium of film provides clean and healthy entertainment; and

(e) as far as possible, the film is of aesthetic value and cinematically of a good standard.

In pursuance of the above objectives, the Board of Film Certification shall ensure that --

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

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

(iii) scenes--

(a) showing involvement of children in violence as victims or as perpetrators or as forced witness to violence, or showing children as being subjected to any form of child abuse ;

(b) showing abuse or ridicule of physically and mentally handicapped persons; and

(c) showing cruelty to, or abuse of, animals, are not presented needlessly;

(iv) pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect, or desensitising or dehumanising people are not shown;

(v) scenes which have the effect of justifying or glorifying drinking are not shown;

(vi) scenes tending to encourage, justify or glamorise drug addiction are not shown ;

(vi-a) Scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown.

(vii) human sensibilities are not offended by vulgarity, obscenity or depravity;

(viii) such dual meaning words as obviously cater to baser instincts are not allowed;

- (ix) scenes degrading or denigrating women in any manner are not presented;
- (x) scenes involving sexual violence against women like attempt to rape, rape or any form of molestation, or scenes of a similar nature are avoided, and if any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown;
- (xi) scenes showing sexual perversions shall be avoided and if such matters are germane to the theme, they shall be reduced to the minimum and no details are shown;
- (xii) visuals or words contemptuous of racial, religious or other groups are not presented;
- (xiii) visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes are not presented;
- (xiv) the sovereignty and integrity of India is not called in question.
- (xv) the security of the State is not jeopardised or endangered;
- (xvi) friendly relations with foreign States are not strained.
- (xvii) public order is not endangered:
- (xviii) visuals or words involving defamation of an individual or a body of individuals, or contempt of Court are not presented;

Explanation : Scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of Court will come under the term "contempt of Court" and

(xix) National symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).

The Board of Film Certification 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 the period depicted in the film and the contemporary standards of the country and the people to which the film relates, provide that the film does not deprave the morality of the audience."

Before there is any further advertence to understand and appreciate the law relating to grant of certificate by the Board and its impact on the collective, we think it seemly to refer to the importance of respect to the National Anthem.

It cannot be forgotten that national anthem is the national pride and must be respected. The national character is built when people develop national habits and as a consequence of which certain things are done and certain things are not done. It is worth remembering that things which are required to be done, have not done, one is indubitably in default. National anthem is understood to be a

song expressing patriotic sense and is regarded as the official national song holding the position of popular feeling.

National Anthem is to be sung with magna cum laude and nobody can ostracize the concept of summa cum laude. In the case at hand, as we have noted earlier the son of the protagonists sings the National Anthem as a surprise item. The presentation, according to us, is in medias res. The child actor forgets the line and utters the term "sorry". To some it may appear lapsus linguae, slip of the tongue or a natural forgetting but if the whole thing is perceived, understood and appreciated in complete scenario, it is the script writer's fertile imagination and the Director's id est. It is deliberate. A deliberate slip of the pen. It is because there is in a way, deliberation to project a dramatic effort to show that the scene depicted in the film is on an absolute terra firma. The writer and director have totally forgotten that they were portraying the National Anthem of a great country.

In "Shashtras" this great country has been described as under :

"ASMAD DESHA PRASUTASYA

SAKASADAGRA JANMAMAH

SWAM SWAM CHARITRAM SCHIKSERAN

PRITHIVYAM SARVA MANAVAN."

Not for nothing, in one of the ancient epics of India it has been so said :

"API SWARNAMAYI LANKA NA ME ROCHATE LAKSHMAN JANANI JANMA-BHUMISCHA SWARGADAPI GARIYASI."

They have not kept in mind "vox populi, vox dei". The producer and the director have allowed the National Anthem of Bharat, the alpha and omega of the country to the backseat.

On a first flush it may look like a magnum opus of patriotism but on a deeper probe and greater scrutiny it is a simulacrum having the semblance but sans real substance. There cannot be like Caesar's thrasonical brags of "veni, vidi, vici." The boy cannot be allowed to make his innocence a parents rodomontrade, at the cost of national honour. In our view it is contrary to national ethos and an anthema to the sanguinity of the national feeling. It is an exposition of ad libitum.

The national anthem is pivotal and centripodal to the basic conception of sovereignty and integrity of India. It is the marrow of nationalism, hypostasis of patriotism, nucleus of national heritage, substratum of culture and epitome of national honour. In this context we may refer with profit to the decision rendered in the case of Bijoe Emmanuel and Others Vs. State of Kerala and Others, . In the said case the two Judge Bench of the Apex Court in paragraph 10 has categorically observed that provisions of the Prevention of Insults to National Honour Act was enacted as the Parliament has not been unmindful of national

honour. In the said case, the Apex Court in paragraph 9 expressed thus :

"9. We may at once say that there is no provision of law which obliges anyone to sing the National Anthem nor do we think that it is disrespectful to the National Anthem if a person who stands up respectfully when the National Anthem is sung does not join the singing. It is true Article 51A(a) of the Constitution enjoins a duty on every citizen of India "to abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing."

We have referred to the aforesaid facet of the decision to indicate that the Apex Court had taken note of Article 51A of the Constitution of India and expressed the view that in no uncertain terms the persons who stand up respectfully to the National Anthem where it is sung shows due respect to the National Anthem.

It is relevant to state here that the Central Government had initially framed a set of Rules called Cinematograph (Certification) Rules, 1983 which came into force on 1st day of June, 1983. The said Rules deal with various facets. Though we are dealing with the national anthem but it is not out of place to make a reference to national flag because Article 51A(a) also refers to national flag. The Government of India in the Ministry of Home Affairs has issued instructions called, Flag Code of India. We do not have to delve into that in detail but suffice it to say that Article 51A which was inserted in the Constitution by 44th Amendment (Act No. 1978) brought our Constitution in line with Article 29(1) of the Universal Declaration of the Human Rights. Article 29(1) of the Universal Declaration of Human Rights reads as under :

"Everyone has duties to the community in which alone the free and full development of the personality is possible."

In this context it is worthnoting that the founding fathers of the Constitution of India had encapsulated in a most vibrant manner in the Preamble of the Constitution the feelings, the needs, the desires and aspiration of a great country. Many an eminent jurists on many an occasion, opined that fundamental rights enshrined in part III of the Constitution of India have inbuilt obligation therein. To elaborate : it has been expressed that rights and duties co-exist. Article 51A was brought by an amendment not to deviate from the path or pave the way of transgression of the national value and unitedly stand together to re-construct the nation as an ideal one where a citizen does not claim to enforce his right but also solemnly adhere to perform the duty. The Constitution casts a duty on every citizen to abide by the Constitution and respect its ideals and institution and national flag and national anthem. Apart from the above many other behavioral pattern and duties are expected from the citizen. It is because the concept of duty is embedded in the highest tradition of the Indian culture, thought, literature, history and philosophy. True it is, the duties which have been incorporated in the Article 51A of the Constitution are not enforceable unless the

Parliament or the State Legislature makes the law in regard for its enforceability but it can be indubitably stated the rights flow from duties when well performed. The great political philosopher Harold Laski long back had said that the rights are related to functions and are given only return for some duties to be performed. Rights are conferred on the individual persons not for their individual upliftment but also for social and collective good. In this context we may profitably quote what the Father of the Nation had said in this regard:

"The true source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will-o-the-wist, the more we pursue them, the farther they will fly."

"I learned from my illetrate but wise mother that all rights to be deserved and preserved come from my duty well done. Thus the very right to live accrues to us when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and women and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for."

Keeping the aforesaid in view if we proceed to X-ray the bedrock of the provisions and the statement and objects and reasons of the 1971 Act it is clear as noon day that despite many a language, culture, religion and ethnic values we have one flag and one national anthem. National anthem is the symbol of our history, sovereignty, unity, pride and honour. Any person who shows disrespect to the national anthem in a way, has to be regarded involved in anti-national activity. The dedication of our forefathers, the sincerity of the people who fought for the people and suffered death and sense of patriotism that was shown, cannot be thrown aboveboard on the ground of hypertechnicality when the interest of the nation is involved. When the pride of the nation is in issue and when nationalism has to play an essential part in the role of developing country, though the basic technicality has an entry but they cannot be allowed to govern or dominate primal or pivotal factors. Every citizen should remember that every word, deed and thought by him has to be indicative of the respect for the Constitution and the national anthem. No one is permitted to pave the path of deviancy and introduce the theory totalistic individualism in the name of freedom of expression. In that event freedom of expression in the name of art or liberty of creativity would amount to, to borrow the terminology of Dr. B.R. Ambedkar "Grammar of Anarchy."

In this context it is relevant to refer to form VIII framed under Rules 22(9) and 24(9). The said form deals with the form the report of members of examining/ revising committee. The necessary part of the said form is as under :

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

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."

28A. It is to be borne in mind that the principles which have been notified vide notification dated 6-12-1991 are to be read in a broad manner. Clause (1) of the notification categorically states about the objectives of film certification and in Clause (a) emphasis has been laid on the factum that the medium 91 the film remains responsible and sensitive to the values of the society. Clause (2) lays down that keeping in view the objectives mentioned in Clause (1) the Board of film certification is required to ensure certain aspects. Apart from many other aspects which are relevant is that anti-national attitude are not presented. Sovereignty and integrity of India is not called in question and public order is not in danger. Clause (2) as has been produced hereinbefore casts a heavy obligation on the Board of certification to ensure that the film is judged in entirety from the point of view of its over all impact. It also mandates the Board to take note of contemporary standard of the country and the people to whom the film relates. It is pertinent to state here that the film must be considered as a whole. By itself, it is a guideline. That apart various aspects have been woven into Clause (2) of the guidelines. The Court is required to enter into the realm to find out whether there has been compliance of the Clause (3) of the guidelines or not and the Court can always try to find out whether other statutory guidelines have also been complied with or not. It is also worthnoting here that the guidelines can never be treated to be exhaustive. They are to be regarded as the genus and that is why the Clause (3) has been added. The duty of the Board is extremely sensitive and simultaneously difficult inasmuch as they have to keep many factors in view and cannot be oblivious of the essential factors. In the conspectus of the things that has been revealed to us we are not constrained to hold that the respondents 4 and 5 have taken liberty of the freedom of expression which according to us is totally impermissible. Freedom has its limitation as it can never be absolute. True it is it has been observed in the case of K.A. Abbas Vs. The Union of India (UOI) and Another, that the Board of Censor is set up consisting of "high calibre and expertise and provides for hearing, appeals, and ultimate judicial review, pre-censorship and conditional exhibitions and wealth of other strategies". But the Court is not powerless to go into the question whether the , statutory guidelines, are complied with or not.

In this context we may refer with profit to the decision rendered in the case of Raj Kapoor and Others Vs. State and Others, wherein the Apex Court ruled thus :

"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 high powered Board with specialised composition and statutory mandate is not a piece of utter inconsequence. 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 the case of *Raj Kapoor Vs. Laxman*, the Apex Court expressed the view that judicial review exists. Their Lordships in the case of *Raj Kapoor v. Delhi Administration* (supra) have clearly ruled that the issue of certificate is not the conclusive proof that the film does not offend any of the guidelines. It is worth noting here that the Act itself provides for de-certification of the film. Power of the revision has been conferred on the Union Government. In view of this analysis there can be no scintilla of doubt that the Court has the jurisdiction to see whether there has been violation of guidelines. It is submitted by Mr. Surendra Singh, learned senior counsel appearing for the respondents 4 and 5 that no statutory provisions or guidelines have been violated. He has laid immense emphasis on 1971 Act. He has read out the guidelines to show that the Censor Board has scrutinised in detail and granted the certificate and in the absence of any violation this, Court should not interfere with the opinion of the experts. The learned counsel has also drawn attention to the order relating to the national anthem of India to show that in the general part there has been a clear direction that the national anthem is played in course of the newsreel or documentary, the audience is not expected to stand up as the same is bound to cause interruption in exhibition of the film. We may clarify that though we have framed two questions at the beginning one relates to certification and other relates to the standing up of the audience when the national anthem is sung, we may not be required to deal with the second aspect. However, we may only observe here that the submission of the learned senior counsel in this regard is not correct as the said instructions only relate to the newsreel and documentary film and not to the feature film. We are not inclined to dwell in detail as we are inclined to delve deep in the first facet.

We have already reproduced order relating to the national anthem. In Para (3) mass singing of the national anthem is provided. If the same is perused in proper perspective it would become clear that certain dignity and sacrosanctity is attached to singing of national anthem. It is so because it is the pride and honour of the nation. True it is, reference has been made to the letter dated 12th March, 2001 but on a perusal of the same it is plain as day that it deals with how the guidelines are primarily advisory. We may at this stage state that we are not concerned with the criminal liability of any person. These guidelines even if construed as only guidelines, they have to be respected. They are required to be followed. Quite apart from the above the Board has to ensure that the medium of

film remains responsible and sensitive to the values and standard of the society. The Board has to see that the public order is not in danger. The Board is required to see anti-national attitude is not presented. It is the obligation of the Board that sovereignty and integrity of India is not called in question. A duty is cast on the Board to judge a film in entirety from the point of view that its over all impact is good. The Board has the responsibility and accountability to see that the film is examined in the light of contemporary standard of the country and the people to whom the film relates and provides that the film does not deprave the morality of the audience. In our considered opinion the aforesaid guidelines are in wide expanse. The Board, though an expert body cannot take a narrow view of these guidelines and try to apply it as strait-jacket formula. It is pertinent to mention here that Clauses (1) to (3) are to be read cumulatively along with the requirement of Form VIII which requires the Board to ensure that the medium of the film remains responsible and sensitive to the values of the society and creative freedom is not curbed. We are conscious that the censorship shall be responsible for social change but simultaneously it cannot be bereft of any duty, obligation, accountability and responsibility. The Board should be Argus-eyed. This being the position of law and national anthem being the honour, pride and symbol of India and it is basically being the symbol of sovereignty and integrity of India, every citizen is under the obligation to respect. The Constitution of India, national flag and national anthem have to be put on the high pedestal. The Apex Court in the case of *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, as we have reproduced above has clearly laid down that when the national anthem is sung if one stands up it should not be treated as disrespect. If the aforesaid judgment is understood correctly it requires that audience must stand. True it is, Mr. Surendra Singh, learned senior counsel for the respondents 4 and 5 has submitted that the audience who are watching the motion picture in the cinema hall stand on a distinct footing. When getting into that arena we may proceed to deal with the fact situation. The pivotal question is whether the depiction of the national anthem in the film has been done in such a manner that there has been no dishonour to the same. We have already noted down the manner of depiction on the earlier part of our decision. It is quite demonstrable and patently clear that the national anthem was used in a variety show of a school. It was presented as an item on behalf of Class IV students. It is also noticed that when the boy started singing the national anthem the audience do not stand up immediately. The movement is quite slow. The audience in the film is taken by surprise. They are non-plussed. As we have noted, some of the audience stand after three lines, some of the audience after four lines and some after five lines. The national anthem has not been sung in an uninterrupted manner. The boy says "sorry" and mother fills up the words. Mr. Singh has pointed out with quite vehemence that the national anthem is a song of celebration and not a song of funeral. We perceive no logic in the said submission. The national anthem is a song of dignity. It is an anthem of honour. It projects the sacrosanctity and integrity of India, it epitomises the oneness of the nation and it makes every citizen to be sensitively aware of the national

feeling. This has no comparison with the funeral. Anthem is sung with dignity and has a different place and purpose than an atmosphere of funeral. Even if it is a celebration it should be done in a dignified manner. It cannot be, by any stretch of imagination, create sense of jubilation with a dramatic overtone, a projection of contrived theatricality and sense of portrayal which is different to the national dignity. Many a question arises when one sees this screen :

(a) whether national anthem can be used in a variety show/cultural show of an annual school day of a school?

(b) Whether it can be depicted as a surprise item?

(c) Whether dramatis personae be permitted to cause interruption? We may hasten to add here that when in real life at the end of a cultural show when national anthem is sung one may forget or may not be able to complete due to certain unavoidable circumstances but in the film one knows the future. When a particular scene is put into cinematic medium in the silver screen the child is directed, repeated rehearsals are done and multiple takes are taken and, therefore, everyone involved with the script is aware what is going to happen. In view of this the question is important and the concept of permissibility becomes relevant.

(d) Whether the audience in the film can be allowed to stand/get up taking their own time because explanation is given slowly they understand that the national anthem of India is sung?

(e) Whether national anthem of India can be sung in such an atmosphere where people do not understand the honour and dignity of the same and react in a different manner? We may also hasten to add here that it is submitted by Mr. Singh that they have shown respect when the understood but the real issue is should it be sung before the audience who do not understand.

(f) Next, but a vital question is whether national anthem can be picturised to gain an advantage in a commercial manner? It is submitted by Mr. Singh that a laudable attempt has been made by the respondents 4 and 5 to popularise the national anthem. To this, Mr. Yadav has submitted with Vehemence that though there is apparent manifestation of patriotism, but the purpose is commercial and respondents 4 and 5 cannot be allowed to capitalise on the same.

When these questions arise and what we have rioted earlier, in our considered view that the national anthem has been sung in the movie as if it is a song of advertisement for a commercial purpose. It is absolutely discernible. Quite apart from the above it runs counter to the ratio laid down by the Apex Court in the case of *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, as the audience in the film do not stand up immediately. We may also state that as the national anthem is regarded as the honour and symbol of sovereignty of India it is not appropriate to show it in the manner like it has been projected. It is also not inappropriate to state here that this gives rise to public order. We are not

going to dwell on the concept of public order but it is likely to cause reaction amongst the people. The whole thing can be looked into from another angle. Guidelines stipulate that the whole motion picture has to be seen from a general view point. It has to be creative. But a sixty-four million dollar question arises whether in the name of creativity in a feature film the national anthem can be utilized in this manner. National Anthem as has been indicated is the symbol of history, unity, and pride. In the film, the national anthem has been bifurcated into two parts. The boy sings one part and the mother sings the rest, may be the last five words. Mr. Singh, learned senior counsel appearing for the respondents 4 and 5 with all his forensic skill would submit that the mother immediately thought it appropriate to complete the national anthem as it should not go unfinished. But the fact remains that the boy says "sorry" in the midst of the anthem and mother after some time completes the same. All this has been done to create a dramatic impact in the picture for the benefit of the producer. This should not be allowed to be done for the popularisation of the national anthem as has been understood in this great country. That apart in our considered view the national anthem which is the glory of the country and portrays the unity of the country cannot be shown in a variety show or a cultural programme of a school as an item. In our considered opinion if Section 5A of Cinematograph Act and Rules framed thereunder, guidelines framed by the Central Government and Article 51A(a) of the Constitution and above all the Apex Court decision rendered in the case of *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, are understood and appreciated in proper perspective, the irresistible conclusion is that incorporation of the national anthem in the film is totally uncalled for. The Board has failed in its duty while giving the certificate. We may say that it has not acted with due responsibility. The Board has taken the stand that nothing was found wrong as it was done for laudable purpose. Watching the necessary part of the picture we do not see any laudable purpose. On the contrary it is for benefit of the individual. Collective sensitivity and national feeling cannot be violated. Corrosive attitude in regard to honour of the national sentiment is totally impermissible. The dramatisation of the national anthem is against the constitutional philosophy. Being of this view we direct as under :

(a) The film "Kabhi Khushi Kabhi Gham" shall not be shown in any theatre unless the scene which depicts the national anthem is deleted.

(b) Respondents 4 and 5 shall immediately withdraw the film from all cinema-halls and the theatre owners are restrained from showing the film in the present form.

(c) The respondent No. 3 shall withdraw the certificate unless the deletion is effected and deleted feature film is shown to the members of the Board as required under the Act and the Rules.

(d) The aforesaid film shall not be telecast in national channel and also in any satellite channel Without deletion.

(e) If any video cassette/VCD/DVD is sold in the market without deletion of the national anthem the appropriate authority shall take action against the said persons as permissible in law as it would amount to dealing with an uncensored film.

(f) No cable operator shall show the movie as long as the national anthem is not deleted as that would tantamount to showing of an uncensored film.

As we have dealt with issue No. 1 and held it against the respondents 4 and 5 we are not inclined to enter into the debate with regard to the issue No. 2. Accordingly we refrain ourselves from doing so.

In the result the writ petition is allowed to the extent indicated above. Taking note of the totality of things we further direct that the respondents 4 and 5 shall pay a sum of Rs. 15,000/- (fifteen thousand only) to the petitioner towards the costs of the litigation.