

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P. (C) 6806 of 2010**

Reserved on: February 17, 2011

Decision on: March 9, 2011

SRISHTI SCHOOL OF ART, DESIGN &  
TECHNOLOGY

..... Petitioner

Through: Mr. Jawahar Raja with  
Mr. Mayur Suresh and  
Mr. Rajat Kumar, Advocates.

versus

THE CHAIRPERSON, CENTRAL BOARD OF FILM  
CERTIFICATION & ANR.

..... Respondents

Through: Mr. Jatan Singh, CGSC with  
Mr. Ashish Kumar Srivastava,  
Advocate.

**CORAM: JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be  
allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**JUDGMENT**

**09.03.2011**

*"The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests."* [Justice Harlan in **Cohen v.**

***California 403 U.S. 15 (1971)]***

*“I disapprove of what you say, but I will defend to death your right to say it”* [Attributed to Voltaire in S.G.Tallentyre, **The Friends of Voltaire** (1907)]

1. The Petitioner, which has produced a documentary film ‘*Had Anhad*’ (Bounded-Boundless), challenges in this petition an order dated 28<sup>th</sup> May 2010 passed by the Film Certification Appellate Tribunal (‘FCAT’) upholding three of the four excisions ordered by the Central Board of Film Certification (‘CBFC’) by its order dated 5<sup>th</sup> November 2009 while granting the film a “V/U” Certificate.

***The facts in brief***

2. The Petitioner states that it is a reputed educational institution that produced ‘*Had Anhad*’ as part of a series of four films around the legacy and teachings of the 15<sup>th</sup> century poet-philosopher Kabir. It is stated that work on the films started some time in 2003 and concluded in 2009. The Petitioner explains that the films, conceived by the documentary film maker Shabnam Virmani, were “part of a larger project bringing together the experiences of a series of journeys in search of Kabir in the contemporary.” Further, “the journeys inquire into and express the spiritual and socio-political

resonances of Kabir's poetry in the form of documentary films, folk music videos, music CDs and poetry books.”

3. The Petitioner applied for certification for all the four films. The CBFC granted certificates of unrestricted exhibition to three of the four films (other than *Had Anhad*). The CBFC proposed minor changes in two films which the Petitioner accepted and complied with. As regards *Had Anhad* the CBFC by an order dated 5<sup>th</sup> November 2009 directed the Petitioner to carry out four excisions. The Petitioner states that no oral hearing was given to it. After receiving the said order the Petitioner wrote to the CBFC on 15<sup>th</sup> February 2010 in reply to which the CBFC informed the Petitioner on 22<sup>nd</sup> February 2010 that:

“due to absence of the applicant on the day of examination, the oral views of the committee/hearing were not given. Based on the examination committee's recommendations, the show cause notice in respect of three documentary films were communicated to you, wherein inadvertently it has been mentioned that the applicants were heard. However, if you are aggrieved of the decisions of the committee/s, it is open to you to prefer an appeal/application along

with prescribed fee u/r 24 of Rules before the undersigned to refer the films to Revising Committee. Further, you can also appeal before the Film Certificate Appellate Tribunal situated at New Delhi u/s 5 C of the Act against the decision of Examination Committee/Revising Committee”

4. The Petitioner thereafter appealed to the FCAT which by its impugned order dated 28<sup>th</sup> May 2010 upheld three of the four excisions ordered by the CBFC.

### ***The Film***

5.1 The film has been viewed by the Court in the presence of learned counsel for the parties as well as Ms. Virmani. It begins with the film maker taking the viewers first to Ayodhya where she strikes a conversation with a shopkeeper selling VCDs of the demolition of the Babri Masjid that took place on 6<sup>th</sup> December 1992. The camera briefly shows the said VCD being played on the television set at the shop. Another person joins the conversation. At this stage the film maker seeks to know from them whether the bringing down was the masjid was a good thing. She asks why, when according to Kabir Das, Ram resides in each body, does Ram

need “this temple?” She questions the purpose of keeping the images of the destruction of the Babri Masjid alive when people are losing their lives in riots and the country’s progress is being harmed.

5.2 The film maker next travels to Malwa in central India where in village Lunyakhedi she meets Prahlad Tipanya who is a popular singer of Kabir’s poems. The film captures the magical rendering by Prahlad Tipanya of Kabir’s songs. It records the conversations between Prahlad Tipanya and certain persons of the dalit community on how Kabir’s Ram is not limited to being the son of King Dashrath, the husband of Sita or the killer of Ravana but who is a light that permeates all and resides in each body.

5.3 The film next takes the viewer to Mukhtiyar Ali, a Mirasi singer in Pugal village in western Rajasthan. As the film maker journeys there she wonders what Ram she would meet there. The viewer witnesses the conversations the film maker has with Mukhtiyar Ali, his father Vasaye Khan and the soulful rendering of Kabir’s songs by Mukhtiyar Ali.

5.4 The viewers are next taken to Benares where the different versions of Kabir's birth and life are narrated by Muslims belonging to the weaver community and a train ticket collector there. A third version is given by a Mahant of the Dharamdasi Kabir Panth at Damakheda in Chhattisgarh. The film maker then travels to Maghar in Uttar Pradesh where Kabir is believed to have been buried and has a conversation with the caretaker of the *mazaar* (grave) of Kabir.

5.5 Then the viewers are introduced to a theatre group in Indore rehearsing a play on Kabir. This is followed by conversations with the Director of the theatre, a folklorist and a writer activist, on who Kabir was and what his poems and philosophy signified. The film maker's angst appears as text in which she says that "Kabir seems to push me to question the borders of my identity – where I draw the line, where I build my walls." She travels to the Wagah border (near Amritsar) that separates India and Pakistan and the camera captures the change of guard ceremony. The film maker travels back from the Wagah border in a local bus where she captures the conversations between the passengers of the bus.

5.6 The film maker then takes the viewer across the border to Karachi in Pakistan where the first encounter is with Ghulam Akram a member of a leading family of qawwals. The film captures the stirring rendition of Kabir's songs by Farid Ayaz and his group. One of these songs explains that there are six milestones in man's journey the last three of which are *Aulia*, *Peer* and *Faqir*. One who leaps across limits is an *Aulia*, one who leaps across the limitless is a *Peer* and the one who leaps across the limit-limitless (*Had Anhad*) is a *Faqir*. Over intense conversations Farid Ayaz explains to the film maker and Prahlad Tipanya who has travelled with her, that Kabir was above them all. The film maker's narrative as text reads: "Amazing that I should run into them in Pakistan too...a Ram and Kabir beyond borders." The film then captures the rendition of Kabir's songs by Shafi Faqir also in Pakistan. It records the insightful conversations with him on who Kabir was and what his work means. The film ends with the return of the film maker and her crew to India and the song of Kabir in the voice of Farid Ayaz: "In search of love I set out from home, and I found the beloved in my heart." Ayaz's narration of a fable about flies and moths forms the fitting finale. Those who have figured out the truth about life need no certificate that they have.

5.7 The film is indeed about the film maker's journeys across central India and to Karachi in Pakistan in quest of the Ram that Kabir talks of and what Kabir's creative work signifies. Throughout the film there are montages of the rich central Indian landscape, its sounds, its sights and colours forming the perfect backdrop to the rendering of Kabir's songs in myriad voices of mystical beauty. Regions, borders, languages, religions and nations melt away in Kabir's universal message of love and compassion that is compellingly portrayed. At the end of the film the viewer is, far from being left feeling hateful or vengeful towards any religion or community, impelled to introspect and contemplate on the philosophical message of the futility of violence that forms the running theme of Kabir's poems. This overall context which is unmistakable when the film is viewed as a whole is important to keep in mind when proceeding to examine the justification for the three excisions ordered by the CBFC and concurred with by the FCAT.

### ***Broad principles governing censorship***

6.1 In the several decisions handed down involving the censoring of documentary and feature films, the Supreme Court has interpreted

the provisions of the Cinematograph Act, 1952 ('CA'), the Guidelines under Section 5-B thereof in light of Articles 19 (1) (a) and 19 (2) of the Constitution of India. One of the early cases on film censorship decided by the Supreme Court was *K.A. Abbas v. Union of India AIR 1971 SC 481*. The film in question was a documentary titled '*A Tale of Four Cities*'. The Court held that "censorship of films including prior restraint is justified under our Constitution" and proceeded to explain (AIR, p. 498):

"The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. **Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good.** We must not look upon such human relationships as banned in toto and forever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only

in its ideal form and the line is to be drawn where the average man or moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth.” (emphasis supplied)

6.2 Further, the Supreme Court in *K.A. Abbas* emphasised that the mere portrayal of a social vice would not attract the censor's scissors. It was held (AIR, p. 499):

“Therefore it is not the elements of rape, leprosy, sexual immorality which should attract the censor's scissors but how the theme is handled by the producer. It must, however, be remembered that the cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous etchings of Goya do not horrify one so much as the same scenes rendered in colour and with sound and movement, would do.”

6.3. In *Ramesh v. Union of India AIR 1988 SC 775* the challenge was to the telecast of a film ‘*Tamas*’ which depicted the violence, killing and looting that took place during the partition of the

country. The Supreme Court agreed with the observations of Justice Vivian Bose in *Bhagwati Charan Shukla v. Provincial Government AIR 1947 Nag 1* that (AIR, p. 778):

"... the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view."

6.4 It was further observed (AIR, p. 781):

"If some scenes of violence, some nuances of expression or some events in the film can stir up certain feelings in the spectator, an equally deep, strong, lasting and beneficial impression can be conveyed by scenes revealing the machinations of selfish interests, scenes depicting mutual respect and tolerance, scenes showing comradeship, help and kindness which transcend the barriers in religion."

6.5 It was held that "viewed in its entirety" the film was "capable of creating a lasting impression of this message of peace and co-existence and that people are not likely to be obsessed, overwhelmed or carried away by the scenes of violence or fanaticism shown in the film."

6.6 In *S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574*, it was

explained (SCC, p. 599):

"Freedom of expression which is legitimate and constitutionally protected cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."

6.7 In *Life Insurance Corporation of India v. Prof. Manubhai D. Shah* (1992) 3 SCC 637, the Supreme Court underscored that the restrictions in Article 19 (2) on the freedom under Article 19 (1) (a) had to be interpreted strictly and narrowly. It was held (SCC, pp 664-665):

"But since permissible restrictions, albeit reasonable, are all the same restrictions on the exercise of the fundamental right under Article 19(1)(a), such restrictions are bound to be viewed as anathema, in that, they are in the nature of curbs or limitations on the exercise of the right and are, therefore, bound to be viewed with suspicion, thereby throwing a heavy burden on the authorities that seek to impose them."

The burden would, therefore, heavily lie on the authorities that seek to impose them to show that the restrictions are reasonable and permissible in law.”

6.8 The broad principles enunciated in the above decisions provide the backdrop against which the excisions directed by the CBFC and affirmed by the FCAT require to be examined.

### *The first excision*

7. In discussing each of the four excisions, it is important to keep in view the entire film, which has been summarized above. Further the sequences immediately preceding the portion sought to be excised are required to be adverted to.

8. The film opens with the statement on the screen that Kabir was a 15<sup>th</sup> century mystic poet of north India who defied the boundaries between Hindus and Muslims. Kabir had a Muslim name and upbringing, but his poetry repeatedly invoked the widely revered Hindu name of God – Ram. The question “*Who is Kabir’s Ram?*” appears on the screen, followed by the text:

*“This film journeys through song and poem  
into the politics of religion, and finds a*

*myriad answers on both sides of the hostile border between India and Pakistan.”*

9. There are then plates that appear on the screen explaining the backdrop of the film. The opening plate reads:

*“For centuries, fundamentalist forces amongst Muslims and Hindus have stoked divisive religious politics between the two communities in the Indian sub-continent. Ram is one of the most popular deities in Hindu religious traditions. He was the legendary king of Ayodhya in ancient India; hero of the epic Ramayana. In recent Indian politics, Ram has been invoked by certain groups to consolidate Hindu identity and votes in divisive opposition to Muslims living in India and the neighbouring Islamic state of Pakistan.*

*It is in this backdrop that this film unfolds, in search of the “Ram” invoked in the poetry of Kabir, a popular mystic poet of 15<sup>th</sup> century north India.”*

10. One of the first excisions ordered by the CBFC was that the words “Muslims living in India and the neighbouring Islamic state

of Pakistan” should be deleted as it violates Guidelines 2 (xii), 2 (xiii) and 2 (xvi) formulated by the Government of India in the Ministry of Information and Broadcasting (I&B) by a Notification dated 7<sup>th</sup> January 1978 under Section 5-B (2) CA. Guideline 2(xii) requires the CBFC to ensure that “visuals or words contemptuous of racial, religious or other groups are not presented”. Guideline 2(xiii) requires the CBFC to ensure that “visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes are not presented” and Guideline 2(xvi) requires it to ensure that “friendly relations with foreign States are not strained.”

11. By the impugned order dated 28<sup>th</sup> May 2010 the FCAT has disagreed with the CBFC on the above excision and to that extent allowed the Petitioner’s appeal. The present petition is therefore concerned with the other three excisions that have been upheld by the FCAT.

### ***The second excision***

12. The film maker’s narration appears hereafter on screen as text. It reads:

*“In 2003, I set out in search of Kabir.*

*Why Kabir? What made me want to search for  
a 15<sup>th</sup> century mystic poet today?*

*Maybe turning to Kabir was a turning away  
from Ram...*

*...that militant Ram used to stoke Hindu-  
Muslim hatred in India today.*

*But then, I found a Ram in Kabir too.*

*And their stories began to unfold through the  
fog of history and politics, intertwined.”*

13. The CBFC ordered the excision of the words “militant Ram” on the ground that it violates Guideline 2(xii). The FCAT while discussing this excision observed in para 17 of its order:

“17. It is common knowledge that the Christian, Islam and Hindi religion are very old. The question of a “militant Ram” stoking ill-will between Hindus and Muslims does not arise. Therefore, wherever including in the title card there is reference to “militant Ram” and such similar ideas/words, the words have to be deleted. It is also recommended by CBFC. Guideline 2(xii) is not applicable because it is factually incorrect. During Shri Ram’s times there was no Islam and Shri Ram was a man of peace and was forced to battle with Ravana to save his wife. Lord Rama was not a man of war and returned to Ayodhya as soon as his

wife was freed. Serial No. 2 stands decided.”

14. It has been urged by Mr. Jawahar Raja, learned counsel for the Petitioner that in directing the second excision the CBFC, and the FCAT which upheld it, failed to appreciate the context in which the said words occur. It is urged that the film has to be viewed as a whole in order to understand what the central theme of the film is. Reliance has been placed on a large number of judgments which will be discussed hereafter. Mr. Ashish Kumar Srivastava, learned counsel for the Respondent, on the other hand, reiterated what has been observed in the impugned order of the FCAT. As regards the excision of the phrase “militant Ram” it was suggested that “the same meaning can be conveyed by using the word ‘Ram’ instead of ‘militant Ram’”.

15. In the first place, the law is clear that words or visuals in a film have to be viewed in the context of the whole film. They ought not to be viewed in isolation. It appears that in coming to the conclusion they did on the second excision, neither the CBFC nor the FCAT kept this principle in view. *Gopal Vinayak Godse v. Union of India AIR 1971 Bom 56*, a decision rendered by a Full

Bench of the Bombay High Court concerned the validity of the ban on the Marathi novel '*Gandhi-hatya Ani Mee*' authored by the petitioner which purportedly contained passages and words that were allegedly distortions of history and promoted feelings of communal hatred. The Bombay High Court struck down the ban. Speaking for the Court Chandrachud J (as he then was) underscored the importance of considering the offending passages in the context of the entire book. He observed (AIR, p. 82):

**“We find ourselves wholly unable to take the view that the several passages on which the learned Advocate General relies are capable of promoting feelings of enmity and hatred between Hindus and Muslims in India. A passage here or a passage there, sentence here or a sentence there, a word similarly, may if strained and torn out of context supply inflammatory matter to a willing mind. But such a process is impermissible. We must read the book as a whole, we must not ignore the context of a passage and we must try and see what, reasonably, would be the reaction of the common reader. If the offending passages are considered in this light, the book shall have to be cleared of the charge levelled against it.”** (emphasis supplied)

16. The ratio of the said decision would in the view of this Court

equally apply to words and visuals in a film.

17. On the second excision, the FCAT's approach is intriguing. If Guideline 2(xii) is not applicable as held by the FCAT then the CBFC's conclusion that these words are "contemptuous of racial, religious or other groups" obviously cannot be sustained. Secondly, the FCAT was not called upon to decide the tenability of the understanding of the film maker as regards the projection by certain others of Ram to justify acts of violence. The observations in para 17 of the impugned order of the FCAT about who Lord Ram was and what he did was unnecessary. One may agree or disagree with the film maker's position but the issue is whether she has a right to express her point of view irrespective of its 'acceptability' to the viewer or for that matter to the CBFC or the FCAT. To recall the lines from the famous dissent of Justice Oliver Wendell Holmes in *United States v. Schwimmer* 279 US 644 (1929) (at 655): "...if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought – **not free thought for those who agree with us but freedom for the thought that we hate.**" The constitutional framework of the freedom of speech and expression as enshrined in Article 19(1)(a)

of the Constitution provides democratic space to a citizen to put forth a view which may be unacceptable to others but does not on that score alone become vulnerable to excision by way of censorship. Thirdly, the excision ordered makes little sense. If in the sentence “May be turning to Kabir was a turning away from Ram... that Militant Ram used to stoke Hindu-Muslim hatred in India today” the phrase ‘militant Ram’ is replaced by ‘Ram’, the sentence would read: “May be turning to Kabir was a turning away from Ram... that Ram used to stoke Hindu-Muslim hatred in India today”. This not only mutilates the meaning of the sentence but perhaps renders it more objectionable from the point of view of the CBFC. In any event in the context of the entire sentence, and in the backdrop of the film when viewed as a whole, the words ‘militant Ram’ do not represent the film maker’s view of Ram. It is her comment on how certain others have projected Ram to stoke religious hatred. In fact, she makes it clear that she does not subscribe to this viewpoint when she says soon thereafter: “*But then, I found a Ram in Kabir too*”. The conclusion that the phrase which has been ordered to be excised violates Guideline 2(xii) is legally untenable.

### ***The third excision***

18. The third excision directed is of the entire visuals relating to the demolition of the Babri Masjid and the words beginning with “*Hamare Purvaj Ke Janm Bhumi...*” up to “*...thakathse milenge*”.

The above excision has been upheld by the FCAT by simply stating as under in para 18 of the impugned order:

“18. The tribunal has no hesitation in upholding the deletion of the words and visuals relating to Babri Masjid demolition. The appellant would delete the entire chapter on Ayodhya since there is gross violation of guideline 2(xiii), (xv), (xvii), indicated at serial no. 3 in the CBFC impugned order. The words and visuals promote communal and anti-national attitudes.”

19. On the third excision the counter affidavit states as under:

“The visuals of demolition of Babri Masjid as such are not objectionable but were found to be objectionable in the context of the documentary wherein it purports to symbolize the pent-up anger of the Hindus against building ‘Babri-masjid’ on the ‘Ram Janmabhoomi’ and the said videos are being sold as mark of victory. The English translation of the dialogues between the film maker and On-looker is reproduced by the Petitioner from page no. 41

to 45 of the writ petition paperbook. **In the conversation, the On-looker jubilantly explains about the manner in which the dome of the Masjid was brought down and the justification for the same and contempt towards the Muslim rulers by equating them to attackers, robbers etc.,** hence it was felt by the EC, that the conversation may hurt the sentiments of the section of the society and are provocative in nature with a potentiality of disturbing the public order and hence in violation of guideline no. 2[xiii], 2[xv] & 2[xvii] and hence the excisions were recommended.” (emphasis in original)

20. In order to understand the above submissions, the sequence in the film requires to be discussed. The film maker first travels to Ayodhya and visits a shop selling VCDs and DVDs. Just before this, there appears on screen the following plate of the translated version of Kabir’s poetry:

*“This is the big fight, King Ram*

*Let anyone settle it who can.*

*Is Brahma bigger, or where he came from?*

*Is the Veda bigger, or where it was born from?*

*Is the mind bigger, or what it believes in?*

*Is Ram bigger or the knower of Ram?*

*Kabir turns around, it's hard to see.*

*Is the holy place bigger, or the devotee?"*

21. The camera pans to the television in the shop which is shown playing a VCD of the events immediately prior to the demolition of the Babri Masjid. Interestingly, the viewer does not get to see the actual demolition of the Babri Masjid. To that extent the order of the CBFC as affirmed by the FCAT is factually incorrect. The film maker enters into a conversation with the shop keeper and another person by asking why anyone would buy such a VCD and the shop keeper gives his version of the events of 6<sup>th</sup> December 1992. One of them states how he himself participated in the events leading to the demolition. The conversation that follows reveals the point of view of those seeking to justify what happened on 6<sup>th</sup> December 1992 in Ayodhya with the film maker presenting the counter point. This at best could lead to those viewing the conversation into wondering whether the view projected by the persons selling the VCDs represents the view of the dominant section of society. It is important to know how some of the residents of Ayodhya reacted to the incident and the manner in which they recount from their memory as to what happened.

22. Guideline 2(xiii) requires the CBFC to ensure that the film does not present “visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes”. Guideline 2(xv) requires it to ensure that “the security of the State is not jeopardized or endangered” and Guideline 2(xvii) requires the CBFC to ensure that “public order is not endangered.” The burden of showing that the visuals and words presented in the film “promote” communal or anti-national attitudes is definitely on the state. The visuals and words presented in the film cannot be viewed in isolation. They have to be viewed as part of the whole film. When so viewed they have to be shown to “promote” communal or anti-national attitudes. Likewise, the burden on the state to show that the film as a whole “jeopardises the security of the State” or that it “endangers” public order is indeed a heavy one. Mere apprehension of danger to law and order is hardly sufficient. Neither the CBFC nor the FCAT have in their impugned orders cared to explain why they conclude that Guidelines 2 (xiii), 2 (xv) and 2 (xvii) have been violated.

23. The freedom of the citizen’s speech and expression under Article 19 (1) (a) of the Constitution may not be absolute, but the

restrictions thereon under Article 19 (2) have to be narrowly construed. As explained in *Life Insurance Corporation of India v. Prof. Manubhai D. Shah* (supra) the burden is on the state to show that the benefit from restricting the freedom is far greater than the perceived harm resulting from the speech or depiction. The State has to ensure that the restrictions do not rule out legitimate speech and that the benefit to the protected interest outweighs the harm to the freedom of expression. Justice Harlan in *Cohen v. California* (supra) pertinently asked: “Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us?”

24.1 The broad principle that the film has to be viewed as a whole before adjudging whether a particular scene or visual offends any of the Guidelines has been reiterated in a large number of decisions of the Supreme Court, some of which have been referred to earlier. They have been followed by the High Courts in adjudging the validity of censorship directions concerning documentary films. Some of these decisions will be discussed hereafter.

24.2 Documentary film maker Anand Patwardhan approached the

Bombay High Court against the decision of the Prasar Bharti Board not to screen his documentary film '*Father, son and Holy War*'. The Bombay High Court allowed his writ petition against which the Doordarshan appealed to the Supreme Court. In ***Director General, Directorate General of Doordarshan v. Anand Patwardhan AIR 2006 SC 3346***, the Supreme Court confirmed the decision of the Bombay High Court and observed that the film no doubt dealt with the communal violence but the attempt of the film maker was to portray the miseries of innocent victims of communal riots. It was observed (AIR, pp 3350-3351):

“the message of the filmmaker cannot be gathered by viewing only certain portions of the film in isolation but one has to view it as a whole. There are scenes of violence, social injustice but the film by no stretch of imagination can be said to subscribe to the same. They are meant to convey that such social evils are evil. There cannot be any apprehension that it is likely to affect public order or it is likely to incite commission of an offence.”

24.3 It was further observed (AIR, p. 3353):

“the correct approach to be taken here is to look at the documentary film as a whole and not in bits, as any message that is purported to be conveyed by way of a film cannot be

conveyed just by watching certain bits of the film. In the present situation the documentary film is seeking to portray certain evils prevalent in our society and is not seeking to cater to the prurient interests in any person. Therefore, we have no hesitation in saying that this documentary film if judged in its entirety has a theme and message to convey and the view taken by the appellants that the film is not suitable for telecast is erroneous.”

25. When *Had Anhad* is viewed as a whole, the sequences (visuals and words) concerning the conversations in Ayodhya in the backdrop of the television screen showing the VCD on the Babri Masjid demolition do not in any manner violate any of the three guidelines – 2 (xiii), 2 (xv) and 2 (xvii). A deconstruction of those sequences shows how the film operates at different levels of speech and expression of the protagonists, the film maker and the viewer. At the first level, the film (and the film maker) captures the points of view of those speaking in front of the camera. At another level the film maker enters into a conversation with the speaker and the viewer gets to watch this interplay. At yet another level the film maker communicates to the viewer her reaction to the conversation. Then we have the viewer who is reacting to all of the above and dialoguing or discussing albeit silently with the protagonists and the

film maker by agreeing or disagreeing with one or the other or partly with one and partly with the other. Involved here then are different facets of speech and expression. The right to speak, to disseminate, to argue, to debate, to witness, to react, to ignore, to engage in dialogue, to discuss, to agree, to disagree, to form and hold opinions. These different facets are integral to the freedom of speech and expression in Article 19 (1) (a). A non-fiction film provides the democratic space that permits the viewer, without having to suspend disbelief, to receive ideas, to be provoked and to participate in a discussion. This right of the viewer to think autonomously while reacting to the speaker or the film maker, and to make informed choices, without being controlled by the State, also constitutes an integral part of the freedom of speech and expression. This aspect has been brought out in some of the decisions of the Israel Supreme Court which will be now discussed.

26. In *Israel Film Studios Ltd. v. Gerry* (1962) *Isr SC 15 2407* (at 2416), the Israel Supreme Court was examining the justification of censoring a portion of a short film showing an eviction from the Smail suburb of Tel Aviv. The reason for disallowing the said portion, *inter alia*, was that it did not present the problem in its

entirety. The Supreme Court of Israel reversed the decision of the censors. Speaking for the Court Justice Landau pointed out: “A sovereign arrogating for itself the power to determine what the citizen should know will ultimately determine what the citizen should think; nothing constitutes a greater contradiction of true democracy, which is not ‘directed from above’”. This thought is echoed in an essay titled “Sense and Censorability” (at <http://www.altlawforum.org/law-an-media/publications/sense-and-censorability> visited on 25th February 2011) by legal scholar Lawrence Liang. He points out that the law as interpreted by the Supreme Court “teaches you how you should see the film and a legal theory of spectatorship... it creates a world of reception theory, which plays an important pedagogic role, which is not just about prohibiting a particular view, but also about cultivating a particular view.” Recognising the need to acknowledge the rights of both the “citizen viewer” and the “speaking subject” he says:

“the task of censorship is to teach the viewer to become a citizen through particular spectatorial practices, and the imagined gaze of the citizen-viewer determines the specific content of censorship laws.”

27. *Had Anhad* brings to the fore many of the facets of the freedom of speech and expression. At times the camera is a bystander and

lets us view an exchange between two protagonists. At other times the film maker herself engages in conversation and elicits the point of view of the speaker or voices her own opinion on the issue. The film maker at other times steps back and lets the viewer draw her own conclusions. This is precisely the democratic space that is required to be provided so that the less articulate viewer or the one who has already formed an opinion or has no opinion or has an opposite point of view are all able to appreciate the point of view of the “other” as is essential to all healthy democratic practices. As long as the film provides space for dialogue and discussion of a contentious issue, the ‘policing’ out of a point of view or a visual merely because it is disagreeable to some cannot be justified.

28. The scenes and visuals that constitute the third excision are in one sense a recalling of the memory of an historical event. The recall may be imperfect. It may contradict the collective memory of that historical event. It may revive tensions over the events being recalled. Yet, that by itself does not invite censorial intervention to obliterate the scenes of recall. In *Laor v. Film and Plays Censorship Board* (1987) *Isr SC 41 (1) 421* the censor Board refused to permit the staging of a play *‘Ephraim Returns to the*

*Army*' which described events in the occupied territories under Israeli military rule on the ground that it presented a distorted and false image of the military administration. It feared an outburst of "negative feelings against the State" and "severe offense to the feelings of the Jewish public by the implied and explicit comparison between the Israeli regime and the Nazi occupation." Justice Barak speaking for the Court that negated the ban held: "It is none of the Board's business whether the play reflects reality, or distorts it." He went on to observe:

"Indeed, the passage in the play may offend the feelings of the Jewish public, and is certainly liable to offend the feelings of those with personal experience of the Holocaust. I myself was a child during the Holocaust, and I crossed fences and borders guarded by the German Army smuggling objects on my body. The parallel between the German soldier arresting a child and the Israeli soldier arresting an Arab youngster breaks my heart. Nonetheless, we live in a democratic state, in which this heartbreak is the very heart of democracy."

29. Later in *Bakri v. Film Censorship Board (2003) Isr SC 58 (1) 249*, this aspect was revisited. The documentary film which was censored - '*Jenin, Jenin*' - presented the Palestinian narrative of the battle in the Jenin refugee camp in April 2002 during the

‘Operation Defensive Wall.’ The film maker at the outset declared that he had made no attempt to present the Israeli position. The censor Board banned the film since it was “distorted” and was “offensive to public’s feelings”. The Israel Supreme Court reversed the Board. Justice Procaccia speaking for the Court observed “the messages of the film *Jenin, Jenin*, as described above, are indeed offensive to wide sections of the public in Israel” and still the film could not be banned because “although the injury is deep and real, it does not reach the high threshold required to rescind freedom of speech . . . . the offense is not radically shocking to the point of posing a concrete threat to the public order, in a way that might justify restricting freedom of expression and creativity.” Commenting on this decision, legal scholar Daphne Barak-Erez points out that the Court should perhaps acknowledge the offense to feelings caused by such films but still refuse to uphold the censor Board’s decision “because of the enormous danger of turning the state into the custodian of truth.” (Barak-Erez, Daphne (2007) ‘The Law of Historical Films: In the Aftermath of *Jenin, Jenin*’, *Southern California Interdisciplinary Law Journal*, Vol. 16, 495-522. The English translation of the passages of the above judgments of the Supreme Court of Israel, which in the original are in Hebrew,

are hers.)

30.1 Reverting to *Had Anhad*, the third excision as directed by the CBFC is on account of the film endangering security of the state and public order. Similar reasons adduced by the CBFC to order cuts in other documentary films have met with judicial disapproval. The feature film ‘*Chand Bujh Gaya*’ which depicted the travails of the life of a young couple – a Hindu boy and a Muslim girl – whose friendship and lives are torn asunder in riots in the State of Gujarat formed the subject matter of ***F.A. Picture International v. CBFC AIR 2005 Bom 145***. The CBFC refused to certify the film for exhibition and the FCAT confirmed the order. What weighed with the CBFC and FCAT was that the film depicted gruesome communal violence, which, they felt would foment communal disharmony. The CBFC further held that “the Gujarat violence is a live issue and a scar on national sensitivity. Exhibition of the film will certainly aggravate the situation.”

30.2 The Bombay High Court reversed both the decisions of the CBFC and FCAT. It observed that dissent was the quintessence of democracy and that “those who question unquestioned assumptions

contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon.” It was then observed that “(f)ilms which deal with controversial issues necessarily have to portray what is controversial. A film which is set in the backdrop of communal violence cannot be expected to eschew a portrayal of violence.”

30.3 As regard depiction of violence in Gujarat, it was observed as under (AIR, pp 149-150):

“To say that the violence which took place in the State of Gujarat is a "live issue" and a "scar on national sensitivity" can furnish absolutely no ground for preventing the exhibition of the film. No democracy can countenance a lid of suppression on events in society. The violence which took place in the State of Gujarat has been the subject-matter of extensive debate in the press and the media and it is impermissible to conjecture that a film dealing with the issue would aggravate the situation. On the contrary, stability in society can only be promoted by introspection into social reality, however grim it be. Ours, we believe, is a mature democracy. The view of the censor does no credit to the

maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme.”

31. The documentary film ‘*Aakrosh*’ focussed on the communal riots which took place in Gujarat in 2002. The CBFC declined to grant a certification of exhibition to the film. The FCAT held that the film depicted a “one sided version of one particular community and if it is shown to masses, not only a selective crowd but anyone and everyone, is bound to provoke communal feeling and desire to revenge.” The FCAT observed that the film endangered restoration of peace and tranquility. Setting aside the order of the CBFC and the FCAT the Division Bench of the Bombay High Court in ***Ramesh Pimple v. CBFC 2004 (5) Bom CR 214*** observed:

“But we are unable to share the views of the tribunal that the riots are now history, and therefore, be forgotten by public to avoid repetition of such cruel acts. It is when the hour of conflict is over it may be necessary to understand and analyze the reason for strife. We should not forget that the present state of things is the consequence of the past; and it is natural to inquire as to the sources of the good we enjoy or for the evils we suffer.”

32. In *CBFC v. Yadavalaya Films 2007 (1) CTC 1*, the FCAT had granted an “A” certificate to the film ‘*Kutra Pathirikai*’ subject to certain cuts and deletions which the producer accepted. The film concerned the assassination of the former Prime Minister Shri Rajiv Gandhi and the subsequent events including the investigation and the fate of the assassins and some of the abettors and conspirators. However, the CBFC challenged the order of the FCAT. The Single Judge of the Madras High Court opined that the film should be granted an “A” certificate subject to certain cuts and deletions. The CBFC then appealed against the said judgment. While dismissing the appeal, a Division Bench of the Madras High Court held that each and every piece of evidence depicted in the film “is a matter of public record and public knowledge.” It was held that “Artists, film makers and play writers are affirmatively entitled to allude to incidents which have taken place and to present a version of those incidents which according to them represents a balanced portrayal of social reality. The choice is entirely of the film maker.”

33. The conclusion that *Had Anhad* endangers public order is not based on any material available to the CBFC or the FCAT. In this context the decision in *S. Rangarajan v. P. Jagjivan Ram* (*supra*)

is apposite. Rejecting a similar argument in the said case, the Supreme Court observed as under (SCC, p. 595):

“Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like equivalent of a “spark in a powder keg”.”

34. The FCAT’s concurrence with the CBFC’s decision on the third excision is predicated on its conclusion that the visuals of the Babri Masjid demolition and the conversations around it constitute a “gross violation” of Guidelines 2 (xiii), 2 (xv) and 2 (xvii). The FCAT held that “the words and visuals promote communal, obscurantist, anti-scientific and anti-national attitudes”. The above conclusions are in the view of this Court not legally tenable when the film is viewed as a whole and examined in light of the law as explained by the courts in the decisions discussed. It is necessary in this context to recall the observations of the Supreme Court in

***Bobby Art International v. Ompal Singh (1996) 4 SCC 1*** that “a film that illustrates the consequence of social evils necessarily must show that social evil, the guidelines must be interpreted in that light. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil.” The film when viewed as a whole disapproves of the bigoted views of some of the protagonists. To enable the viewer to form her own opinion it is necessary to present conflicting points of view on an issue. *Had Anhad* makes this dialogue and opinion formation possible.

35. Learned counsel for the Respondents submitted that the decision as to what is permissible to be shown is best left to the CBFC and the FCAT. He relied on the following observations in ***Bobby Art International*** (*supra*) (SCC, p. 16):

“The drawing of the line is best left to the sensibilities of the expert Tribunal, the Tribunal is multi-member body. It is comprised of persons who gauge public reactions to film and, except in case of stark breach of guidelines, should be permitted to go about its task.”

36. In the present case, neither the CBFC nor the FCAT has

undertaken the task of “drawing of the line”. Both have recommended complete deletion of all the visuals and words pertaining to the portion of the film where there is discussion of the Babri Masjid demolition. The demolition of the Babri Masjid on 6<sup>th</sup> December 1992 has been the subject matter of extensive discussion and debate in the public domain over the past eighteen years. There has been litigation in the courts both preceding and consequent upon the incident. The footage of the incident shown on television in the shop in Ayodhya as captured in the film *Had Anhad* has been viewed by millions of people all over the country several times over for several years. The CBFC and FCAT appear to have lost sight of the context of the film *Had Anhad* as a whole. They have viewed in isolation the scenes involving the conversations around the incident of 6<sup>th</sup> December 1992. No reasonable viewer watching the film as a whole would be provoked into harbouring either a communal or anti-national attitude. *Had Anhad* makes a strong statement against bigotry and on the futility of violent disagreements over religion. It cannot be said to be violating guidelines 2(xiii), 2(xv) or 2(xvii) as held by the CBFC and the FCAT.

#### ***The Fourth excision***

37. As regards the fourth excision, both the CBFC and the FCAT

have again not kept in view the film as a whole and have picked up one line in a conversation between the persons returning from Wagah Border after witnessing the change of guards there. The words taken out of context have been held to be “contemptuous of the Muslim community.” The film depicts the prejudiced bigoted views harboured by some against a religious community, but the film does not subscribe to those views. It provokes the viewer into thinking and reacting differently. The film maker wonders how Kabir would have reacted if he was riding in the same bus.

38. Considering that there have been numerous instances in the past where similar excisions directed by the CBFC have been disapproved by the courts, it is surprising that the CBFC and the FCAT have persisted with the view that the above words spoken by one of the passengers in the bus returning from Wagah should be excised. One of the four Members of the FCAT went to the other extreme by giving a dissent note that the film should be granted an “S” certificate subject to the excisions recommended in the order of the FCAT since, in his view, the film “contains contemptuous words and promotes anti-national attitude.” This approach is unsupportable by the legal precedents which require recounting

only for that purpose.

39. The discussion should ideally begin with the words of Justice Harlan in *Cohen v. California* (*supra*) where he observed that “we cannot indulge in the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.” In *Anand Patwardhan v. Union of India AIR 1997 Bom 25*, the refusal by Doordarshan to telecast the Petitioner’s film ‘*In Memory of Friends*’ was under challenge. The film was about the violence and terrorism in Punjab and about a group of Sikhs and Hindus, who at great personal risk were engaged in an attempt to recover the tolerance and communal harmony that once existed in Punjab. Doordarshan defended its decision to refuse permission for the telecast of the film on the ground that “the editorial commentaries also cast aspersions in the existence of God and, if such a documentary is shown to the members of the public, it would definitely hurt the feelings of some of them.” In the documentary film the filmmaker interviewed certain separatist groups. It was contended that “some of the replies of the supporters of Khalistan are full of sparks that can ignite big fire” and that if the documentary is shown to the people “it would

create communal hatred and may even lead to a further violence.”

After discussing the law on the subject, it was concluded by the Bombay High Court as under (AIR, p. 32):

“One may not agree with the view of the film maker. But in a democracy it is not necessary that everyone should sing the same song. Freedom of expression is the rule and it is generally taken for granted. The film maker may project his own message which the other may not approve of it. But he has a right to ‘think out’ and put the counter appeals to reason. It is a part of a democratic give-and-take to which one could not complain. The State cannot prevent open discussion and open expression, however, hateful to its policies. Everyone has a fundamental right to form his own opinion on any issue or general concern. He can form and inform by any legitimate means.”

40. The same film maker Anand Patwardhan approached the Bombay High Court for direction to the Doordarshan to telecast his documentary film ‘*Ram-Ke-Naam*’ which was granted a “U” certificate by the Censor Board. This was a film attempting to deal with the fissiparous and sectarian tendencies and to give out a message for promoting integrative forces. The Doordarshan’s explanation of its decision to refuse permission for the telecast was that “result of telecasting the petitioner’s film on T.V. would be that

there is likelihood that members of both the communities will rise in passion and anger against each other and take to acts which would lead to communal violence and riots.” An objection was taken to certain scenes in the film where a *karsevak* in an interview “justifies even the assassination of Mahatma Gandhi by Nathuram Godse.” Again reiterating that the film had to be judged in its entirety, the High Court of Bombay in *Anand Patwardhan v. Union of India 1997 (3) Bom CR 438* opined that “A powerful plea for communal amity and co-existence is structurally incorporated in the film. Throughout the film those who are intolerant and those who spread hatred in the name of God are condemned. This is meant to create in the audience a response of disgust directed against the perpetrators of communal hatred. The film unmistakably condemns hate-mongering communalists but it painstakingly underlines the fact that they do not represent all Hindus.” Rejecting the point of view that the film provokes commission of offence, it was held that “viewed from the healthy and common sense point of view it is more likely that it will prevent incitement to such offences in future by extremists and fundamentalists.”

41. Anand Patwardhan questioned an order of the FCAT which directed to cuts and one addition to the documentary film '*War and Peace*' (*Jang aur Aman*). The first was with regard to a demonstration scene showing demonstration at Hutatma Chowk, Mumbai where demonstrators were shouting slogans "Hindu Bomb Hi Hi and Muslim Bomb Hi Hi." The FCAT directed that the slogans be deleted. The film showed a speech of a dalit leader Bhai Sangare who questioned why the bomb had been exploded on the day of Buddha Jayanti. He asked "Why didn't you do your blasts on Rama's birthday? It's your culture. All your gods are fully armed. Rama has an arrow, Shankar has a trident, Vishnu has a chopper. All have weapons. So when it's the birthday of armed ones, do your bomb blast. Our Buddha is unarmed." The CBFC directed deletion of the words "It is your culture" in the above speech. The Division Bench of the Bombay High Court in ***Anand Patwardhan v. CBFC 2003 (5) Bom CR 58*** held that the Petitioner was trying to canvas the cause of peace, and in that context it was pointed out that "a war unnecessarily leads to an unjustified production of arms and weapons and at times this is utilised by the politicians towards corrupt purposes." It was further held that there is no need to delete the scene showing people shouting slogans

against the Hindu Bombs and the Muslim Bombs. It was reasoned that “if the scenes of riots in the television series (which are such at the residences of various people), could not affect the public order, there is no reason for anybody to imagine that any such slogans would affect the public order.” It was further underscored that neither is the Indian bomb a Hindu bomb nor the Pakistan bomb a Muslim bomb. “One must know as to whether there is another perception and if so what is it. If the scene is deleted, people will not know as to what is the perception of the bombs in one section of the society.” It was further held that “the whole speech or the scene is to be considered.” As regards the speech of Bhai Sangare, the Bombay High Court held that he was entitled to his expression. It went on to observe:

“Again, the question is whether one sentence can be read separately and can be criticised as affecting public order? What is to be noted is that the entire speech is made to oppose the manufacture of the bomb. It is also critical of the device being exploded on Buddha Jayanti. It is with a view to point out the contrast between Buddha and Hindu Gods that the speaker has referred to the fact that they have weapons in their hands. That by itself cannot amount to creating any conflict or an occasion to affect the public order.”

“....an issue may be one but there are many facets of looking at it. It is quite possible that the persons in authority today may feel that what they see is the only correct facet of it though it may not be so. It is only in democratic form of government that the citizens have the right to express themselves fully and fearlessly as to what is their view point towards the various events which are taking place around. By suppressing certain view point, it is not only the propagator of the view point who suffers but it is the society at large and equally the people in authority who suffer. This is because they fail to receive the counter-view and it may eventually lead to an immense damage to the society due to an erroneous decision at the hands of the persons in authority in the absence of the counter-view. That apart, the freedom of speech and expression is important not merely for the consequences that ensue in the absence thereof but since the very negation of it runs as an anti-thesis to basic human values, instincts and creativity.”

42. The impugned orders of the CBFC and the FCAT on the fourth excision cannot, in light of the law explained in the above decisions, be sustained.

***Scope of the powers of the Court***

43. The answer to the question whether this Court can overturn the

decisions of the CBFC and the FCAT and direct the film to be certified as fit for unrestricted viewing without the cuts has been answered by the Bombay High Court in *F.A. Picture International (supra)* where it rejected the argument that ordinarily the High Court would not substitute the view of the CBFC. It was explained as under (AIR, p. 152):

“Applying the tests which have been laid down by the Supreme Court and for the reasons that we have indicated, we are of the view that the decision of the Central Board of Film Certification was one which no reasonable body of persons could have arrived at. We are conscious of the position in law that the Court exercising writ jurisdiction would ordinarily not substitute its view for the view of an expert. In that formulation, the word "ordinarily" is significant. Significant because the foundation for its exercise tests on the commitment of the Court as an expounder of constitutional principle. Where the decision of the CBFC entrenches upon the fundamental right to the freedom of speech and expression, it is not merely the function but the duty and responsibility of the Court to intervene. Free speech and expression is a value which is fundamental to the functioning of a democratic society. The orders passed by the CBFC and by the Appellate Tribunal are unsustainable and must be quashed and set aside. We order accordingly. We

direct the first respondent to issue an appropriate Censor Certificate for the film "Chand Bujh Gaya". There shall be no order as to costs.”

***Maintainability of the petition***

44. Counsel for the Respondents raised an objection to the maintainability of the petition on the ground of territorial jurisdiction of this Court. It was pointed out that the Petitioner was located in Bangalore and the CBFC which passed the impugned order dated 5<sup>th</sup> November 2009 was in Mumbai. It is submitted that merely because FCAT happened to be in Delhi did not vest this Court with jurisdiction to entertain this writ petition. This issue is no longer *res integra*. A Full Bench of this Court in ***New India Assurance v. Union of India AIR 2010 Del 43*** negated this very contention and held that a writ petition was maintainable as long as the tribunal whose decision was under challenge was located within the territorial jurisdiction of this Court.

***Conclusion***

45. *Had Anhad* is about a film maker’s journeys across the Indian landscape and across the border to Karachi in Pakistan in quest of the Ram that constituted the creative imagination and life of the

philosopher poet Kabir. This is triggered by her interrogating the attempt to turn Ram into a symbol of divisive politics. The film maker finds that Kabir's Ram is beyond legends and narratives. The film lends democratic space to the 'speaking subject' and the 'citizen viewer' to engage in a civilized debate on issues that are perceived to be contentious. It invites introspection into and the cleansing of prejudices from the inner recesses of a bigoted mind with the aid of Kabir's words and thoughts. It demonstrates how the created barriers of regions, borders, languages, religions, nationalities and nations melt away in Kabir's universal message of love and compassion. A viewer who stays to see the film till its end is unlikely to be left feeling hateful or vengeful towards any religion or community. The viewer might be impelled to contemplate on the futility of bigotry and violence. Viewed in this light, and in light of the settled constitutional law of the freedom of speech and expression, none of the excisions as directed by the CBFC, three of which have been upheld by the FCAT, are legally sustainable.

46. Consequently, the impugned orders dated 28<sup>th</sup> May 2010 of the FCAT and the order dated 5<sup>th</sup> November 2009 of the CBFC are

hereby set aside. The film *Had Anhad* will forthwith be granted a “V/U” certificate of unrestricted viewing by the CBFC without any of the excisions directed in terms of the impugned orders of the CBFC and the FCAT. The writ petition is allowed with costs of Rs.10,000/- which will be paid by the Respondent Union of India to the Petitioner within four weeks.

**S. MURALIDHAR, J.**

**March 9, 2011**  
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