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W.P.No.19931 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19931 of 2023

and

W.M.P.No.19286 of 2023

M.S.Mangaadu Amman Movies
represented by its proprietor,
Rajaganapathy Vadivelu,
C22, Shanthinikethan Apartments,
3/940, Kundrathur Road,
Madhanandapuram, Mugalivakkam,
Kancheepuram – 600 125
Tamil Nadu.

... Petitioner

Vs.

1.The Chairman,
Central Board of Film Certification,
Films Division Complex, Phase – I Buildings,
9th Floor, Dr.Deshmukh Marg,
Mumbai – 400 026.

2.The Revising Committee,
represented by its Chairman,
Mrs.D.Balamurali,
Central Board of Film Certification,
No.35, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.



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3. The Regional Officer,
Central Board of Film Certification,
No.35, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records of the impugned order dated 26.04.2023 issued by the 2nd respondent and quash the same as illegal in so far imposing the excisions and modifications and to consider excisions/modifications accepted to be carried by the petitioner's representation dated 09.04.2023 and to direct the 3rd respondent to issue the censorship certificate of 'A' under category 'A' restricted to adult viewers without modifications to the film “A-Padam”.

For Petitioner	: Mrs.A.Arulmozhi
For Respondents	: Mr.K.S.Jeyaganeshan Senior Panel Counsel

ORDER

The writ on hand has been instituted challenging the order dated 26.04.2023 passed by the Central Board of Film Certification.



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2. The petitioner states that he produced his first film namely Aaivukoodam which dealt with brain transplantation. Subsequently, he produced an awareness movie that deals with social problems and the movie is named as “A-Padam”.

3. The petitioner submitted an application to the Regional Office, Central Board of Film Certification, Chennai on 12.12.2022 under Rule 21 of the Cinematography (Certification) Rules, 1983 for certification of the film “A-Padam” (Tamil). The 2nd respondent issued an order dated 10.01.2023 and along with the said order a list of 44 excisions/modifications were issued in the annexure. The petitioner admitted to carry out 8 modifications/excisions out of 20 proposed modifications/excisions. Accordingly, the petitioner submitted his explanations. The admissions and refusal proposed are stated in the explanations. The respondents had not considered the explanations and issued the impugned order dated 26.04.2023, which is merely a replica of the order 15.03.2023 with modification of issue date.

4. The petitioner states that he spent enormous money to make the



movie and the authorities are not considering the ideas and perception of the petitioner's in respect of certain dialogues in the movies. Thus, the present writ petition came to be instituted.

5. Mrs.A.Arulmozhi, learned counsel for the petitioner would contend that the Film Certification Committee as well as the Revising Committee have not considered the spirit of the movie in its context. Certain dialogues in the movie relating to social issue cannot be termed as prohibited and similar such dialogues are allowed in other movies where popular Heroes and Heroines acted. Petitioner alone is discriminated, since he is a small budget film maker. The impugned order dated 26.04.2023 is a mere replica of the order dated 15.03.2023 and therefore, the Revising Committee has not considered the issues by considering the explanations submitted by the petitioner. Thus, the order impugned has been issued without application of mind and liable to be set aside.

6. The learned counsel for the petitioner relied on the judgment of the High Court of Judicature at Bombay in W.P.No.1529 of 2016. The said writ petition before the Bombay High Court succeeded in part. The High Court



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considered the freedom of expression in the context of the facts placed in the said case. However, the said case cannot be applied in all cases, since the movies presented for certification as to comply the subjective satisfaction for the purpose of issuing certificate. Therefore, the factual adjudication resulted allowing of writ petition in part is of no avail to the petitioner in the present case.

7. In respect of the order passed in W.P.No.18426 of 2021 dated 29.09.2021, this Court recorded the fact that the sensorship certificate was issued by the Revising Committee in the said case and consequently, disposed of the writ petition. Thus, the legal principles are not adjudicated and therefore, the said order is of no help to the petitioner in the present case.

8. Mr.K.S.Jeyaganeshan, learned Senior Panel Counsel appearing on behalf of the respondents would oppose by stating that the excisions/modifications are described by the Original Committee and the Revising Committee based on the provisions of the guidelines issued. The excisions suggested are not vague in nature. The provisions of the guidelines have been clearly stated for excisions/modifications in respect of the dialogues



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and scenes in the movie. No doubt the petitioner agreed to rectify certain excisions / modifications, but submitted explanations that all the excisions / modifications cannot be rectified. The petitioner has further stated that it is relevant as per his opinion. The opinion of the petitioner is one aspect of the matter and the Original Committee and the Revising Committee has to consider the social perspective and the impact in the society if such movies are permitted to be screened. Therefore, the authorities rejected the claim of the petitioner and there is no infirmity. In the present case, both the Film Certification Committee and the Revising Committee at Bombay has considered the explanations of the petitioner and found that all the excisions / modifications suggested originally are to be carried out for issuing censorship certificate.

9. Considering the arguments, the order impugned dated 26.04.2023 reveals that the excisions / modifications are made with clear particulars. The provisions under which violations are noticed are also clearly stated in the order impugned. The explanation submitted by the petitioner reveals that he made an attempt to justify certain excisions / modifications, which were not agreeable to the Film Certification Committee and Revising Committee. The



acceptability of the suggestions is the subjective satisfaction of the Committee concerned and many excisions / modifications are rejected by the petitioner by merely stating that such dialogues and scenes in the movie are very much relevant and therefore, the petitioner is not prepared to accept excisions / modifications. Such a stand taken by the petitioner was not accepted both by the Film Certification Committee and Revising Committee.

10. Regarding the principles to be adopted, the Hon'ble Division Bench of the High Court of Madras in the case of ***Ms.A.Arulmozhi vs. The Government of India and Others*** reported in ***AIR 2006 Mad 49***, held as follows:

*“18. On the basis of these principles, guidelines were framed, in exercise of the power conferred by sub-section (2) of Section 5-B of the Cinematograph Act, 1952. The guidelines, which are relevant for this case, are given below:
Section 5(B)(2):*

*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.*



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(b) and (c) xxxxxxxxxxxx

(d) 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.

2. In pursuance of the above objectives, the Board of Film Certification shall ensure that—

(i) and (ii) xxxxxxxxx

(iii) scenes—

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

(b) and (c) xxxxxxxxxxxx

(iv) and (vi) xxxxxxxxx

(vii) scenes tending to encourage, justify or glamorize consumption of tobacco or smoking are not shown;

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

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

(x) scenes degrading or denigrating women in any manner are not presented.



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3. 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, provided that the film does not deprave the morality of the audience.

19. A reading of the above guidelines issued by the Government of India, in exercise of the power conferred under Section 5-B(2) of the Act would clearly indicate that a mandate has been issued to the Censor Board to ensure that the medium of film should remain responsible and sensitive to the moral values and standards of society, giving a clean and healthy environment and, at any cost, the human sensibilities are not offended by obscenity or depravity and that such dual meaning words as obviously cater to baser instincts and such scenes showing the children as being subjected to any form of child abuse are not allowed in the film.

20. The guidelines aforementioned have been carefully drawn. They require the authorities



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concerned that the film certification to be responsive to the values and standards of society and take note of social change. They are required to ensure that the artistic expression and creative freedom are not unduly curbed and the film must be judged in its entirety from the point of view of its overall impact. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience.

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25. At this juncture, we have to take note of the purport of the guidelines issued by the Central Government under Section 5-B(2) and also the duties of the Board and the Courts, as pointed out by the Supreme Court in the various decisions cited supra, while deciding the fitness of the film for certification, as under:

(i) The standard to be applied by the Board or Courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive manner. The concept the obscenity would differ



from country to country, depending on the standards of morals of contemporary society. What is considered as a piece of Literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. The Court must take an overall view of the matter complained of as obscene in the setting of the whole work, but the matter charged as obscene must also be considered by itself and separately to find out whether it is so gross and its obscenity so pronounced that it is likely to deprave and corrupt the viewers, whose minds are open to influence of this sort; and

(ii) In judging the question of obscenity, the Judge, in the first place, should try to place himself in the position of the author of the film. From the viewpoint of the author of the film, the Judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The Judge should thereafter place himself in the position of a viewer and should try to appreciate what kind of possible influence or impact the film



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is likely to cause in the minds of the viewers. Thereafter, the Judge should apply his judicial mind dispassionately to decide whether the film in question can be said to be obscene.”

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33. It is the duty of the Court to consider in each case whether a particular motion picture is obscene or not. Merely because the Censor Board has not followed the guidelines in the other films, it cannot be argued before a Court of law that the Court has to acknowledge or endorse the mistakes committed by the Censor Board earlier.

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35. As pointed out by the Supreme Court, the Censor Board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country, as the movies have unique capacity to disturb and arouse the feelings of the public. The moral values in particular should not be allowed to be sacrificed in the guise of social change or cultural assimilation. When promotion of art and culture is the primary underlying object, how can



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obscurity be allowed to be depicted. The Censor Board should step in firmly and insist that the film being released has a message meant to improve the values of life and should see that the film contains only such scenes which do not affect the values of life. The films should be of educative value and then only they can play an important role in subverting the interests of the society.

36. Cinema or a motion picture is a powerful media of expression. No one has an unbridled fundamental right to free expression to cater to the lower common detriment of debase or pornographic scenes undermining the social fabric to degenerate cultural values. Exhibition of a motion picture with lascivious pornographic sceneries is not a free licence to a producer of a motion picture with a view to exhibit dirt for money's sake or to exploit people's weaknesses as a commercial venture to make money.

37. The Censor Board, while considering the issuance of certificate, must remember that the law against obscenity would protect the society and particularly young from the harmful consequences of the antisocial and commercial



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activities of the peddlers of pornographic material, which is devoid of any artistic, literary or scientific intention or purpose.

38. The Censor Board is duty bound to see the young and the impressionable are guarded against subtle machinations of pseudo artists and producers, as the young persons try to emulate or imitate what they have seen in the movies. What is the effect on the viewer of the picture, in particular on the young cine-goers, is a relevant factor. The motion picture must serve public good and it should not go beyond what it seeks to serve the public purpose.

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49. From the discussions made in the earlier paragraphs, we arrive at the following conclusions: and issue the consequential directions.

(1) Though it is objected as to maintainability of the Writ Petition on the ground that a representation has been sent to the authority concerned for invoking revisional powers under Section 6 of the Cinematograph Act, the said



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objection is not a valid one, especially when an intimation has already been given to the police authorities and the persons concerned that the authority cannot review the same under Section 6 of the Act and it is open to the parties to approach the Court of Law for revocation.

(2) There are several scenes in the film “New”, which are vulgar and obscene, catering to the baser instincts of the audience.

(3) The countless number of dual meaning dialogues in the film show the sexual perversions and the use of child artiste in the lead role, depicting child abuse.

(4) The direction given by the Central Government to the Central Board of Film Certification that no picture shall be certified for public exhibition, which will lower the moral standards of those who see it, has not been given due consideration by the Board, while certifying the film.

(5) The film “New” does not provide a clean and healthy entertainment. The guidelines given in the Cinematograph Act, 1952, that the scenes, showing children being subjected to any form of child abuse or tending to encourage and justify



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smoking, are not to be shown and human sensibilities should not be allowed to be offended by vulgarity and obscenity and dual meaning words, obviously catering to the baser instincts of the viewers are not allowed, have not been followed by the Censor Board, even though the film depraves the morality of the audience.

(6) The Censor Board has failed to follow the principle that it should step in firmly and insist that the film being released as a message is meant to improve the values of life and should see that the law against obscenity protects the society, particularly the young, from harmful consequences of the anti-social and commercial activities of the peddlers of pornographic materials.

(7) The Censor Board is duty bound to see that the young and the impressionable are guarded against the subtle machinations of pseudo artistes and producers, as the young persons try to emulate or imitate what they have seen in the movies. But, in this case, the Censor Board has failed to take into consideration the guidelines, given by the Government, as well as the principles, laid down by the Supreme Court.



(8) Despite number of vulgar and obscene scenes, the Censor Board, second respondent, has sanctioned certificate to this film for public exhibition, unmindful of the evil influence that it could have on the young minds.

(9) As pointed out by the Supreme Court in (1989) 2 SCC 574, S. Rangarajan v. P. Jagjivan Ram, this is a land of Adi-guru Sankaracharya, Ramanujacharya, Madhwacharya, Chaitanya Maha Prabhu, Swami Rama Krishna Paramhansa, Guru Nanak, Sant Kabir, Thiruvalluvar and Mahatma Gandhi, who have all enlightened our path. In the name of new innovation, if we throw away the teaching of these great people, which is a general human morality and wisdom, we are throwing away our ethical standards and the tradition of our country into the winds. Of course, the Censor Board need not have an orthodox or conservative look, but the Board must display more sensitivity to motives, which will have a markedly deleterious effect to lower the moral standards of the viewers, especially the young. In this case, we are of the definite opinion, that the film has been picturised purposely for arousing



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the sensual feelings of the public, depicting the theme, scenes, sequences and songs, with full of child abuse, vulgarity and obscenity and dialogues giving dual meaning, catering to the baser instincts of the public. In view of the utter violations of the statutory provisions and the guidelines and also in view of the utter failure on the part of the Censor Board to take into consideration the general principles and the guidelines while certifying the film, given by the Central Government and the provisions of the Act, the Censor Certificate, which has been issued by the Board to the film “New”, has to be held invalid and the same is liable to be revoked.

(10) Immediately after the release of the film, women groups sent petitions after petitions to the Censor Board, complaining about the obscene scenes in the film. The publicity materials have been published through advertisements in various papers and audio cassettes, violating the provisions of the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987 and though it is brought to the notice of the State Government, the State Government has not



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taken immediate action. Further, the uncensored obscene scenes are screened in the theatres. The audit rated scenes in the film are allowed to be telecast, to enable the children also to view, in spite of the prohibition, contained in The Cable Television Networks (Regulation) Act, 1995. With reference to this, a complaint has been given and the police registered a case against the Producer. After release of the film, the Producer attempted to introduce one more song with full of ugly meanings. During the enquiry, the Producer threatened both the Board officers in their rooms and threw away his cell phone towards the head of the lady member. With regard to this also, a case has been registered against Mr. Surya, the Producer. This shows that the Producer has not only produced the picture, exhibiting ugly scenes to the viewers, but created ugly situation, by publishing the publicity materials, without any clearance from the State Government and also created ugly scenes in the Office of the Regional Officer of the Censor Board, by manhandling the Board Members and making an attempt to assault the lady member.



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(11) After the arguments were over, the matter was posted for orders. In the meantime, the film “New” has finished its run. Therefore, originally, we thought of disposing of the Writ Petition by simply making an observation that the issuance of Censor Certificate is not valid in law and, as considerable time has passed by, the order of revocation is unnecessary. But, when we perused the records, summoned from the Censor Board, and noticed the conduct of the Producer of the film, we are constrained to pass an order, directing the authorities to revoke the certificate issued to the film “New”, or else, we would feel that we will be failing in our duty. If we do not give such a direction, it would amount to allowing the BLACK SPOT to be alive for ever, in the history of Tamil Film World.

(12) As indicated above, it conveys only one message, namely, vulgarity and vulgarity alone and nothing more and does not convey any other message; does not educate the public and also does not give a healthy entertainment. On the other hand, the film has been picturised only to show the sexual perversions and child abuse, in



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order to cater to the baser instincts of the viewers, purely with a commercial purpose. Innovations may be good, but those innovations should not be at the cost of culture and traditions of this great country.

(13) Though The Cable Television Networks (Regulation) Act and the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987 have come into force, as complained by the Censor Board itself, the implementation of those Acts by the State Government is not effective; with the result, uncensored vulgar scenes are displayed in the advertisements and the adult rated films are being shown to the children in television channels. Therefore, the Chief Secretary to the State Government is directed to ensure the proper implementation of these Acts, at least in future.

(14) Already, there are two complaints, given against Mr. Surya, the Producer; one by Srinivasa Entertainments, detective agency, on behalf of the Central Board of Film Certification, whereupon a case is registered by R1 Mambalam Police Station, Chennai; and the other by Mrs. Vanathi Srinivasan, lady member of the Advisory Board,



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regarding the assault on her and misbehaviour, on which a case is registered in Crime No. 1462 of 2004 on the file of F-3 Nungambakkam Police Station, Chennai, for the offences under Sections 336, 353 and 354 IPC. The Commissioner of Police is directed to ensure that those cases are investigated and reports are filed immediately before the Court of Law.

(15)Therefore, we are constrained to issue a mandamus to first and second respondents, to revoke the Censor Certificate issued to the film “New”, and the same is, accordingly, ordered.”



11. In the case of **Central Board of Film Certification vs. Yadavalaya**

Films and Others reported in **2007 (1) CTC 1**, held as follows:

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“12. Freedom of expression and speech has been recognized as one of the pre-eminent rights in a democratic government, the touchstone of individual liberty. Justice Cardozo of the US Supreme Court characterized it as “ - - the matrix of the indispensable condition of nearly every other form of freedom”. Article 19(1)(a) of the Constitution of India guarantees to every citizen the fundamental right to the freedom of speech and expression. Films have always been regarded as constituting a powerful medium of expression. In S. Rangarajan v. P. Jagjivan Ram, 1989 (2) SCC 574, the Supreme Court held that movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of. 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 no one could complain. The State cannot prevent open discussion and open expression, however, hateful to its policies. While dealing with



“The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and 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 the equivalent of a ‘spark in a power keg’.”

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19. The objection of the Board that the film supports the banned organization is completely baseless and imaginary. On the other hand, the film clearly depicts the cruel and inhuman behaviour of the activists of the banned organization. It also shows that the assassination of Rajiv Gandhi is approved by none. Further, the film gives a clear and unambiguous message that terrorism does not pay, that the arms of law and order machinery are too strong and that those who kill have ultimately to meet with death. There has been shown nothing in the film from which it could be inferred that the LTTE has been glorified or attracts the sympathy of the public.

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22. In our opinion, it is doubtful whether these Appeals are maintainable, in view of the decision of the Supreme Court in Union of India v. K.M. Shankarappa, 2001 (1) CTC 621: 2001 (1) SCC 582. It is rather unfortunate that the certification of the film has been delayed for more than 12 years without any acceptable and reasonable ground. In our opinion, there is



nothing objectionable even in the last sequence in the film showing the attempt on the life of the former Chief Minister of Tamil Nadu by the LTTE Organisation. It has to be stated that the film ends with the message “no more violence”. Consequently, we modify the order of the learned Single Judge to that extent and direct the Censor Board to grant “A” certificate to the present edited version of the film within a period of four weeks from today.”

12. The Three Judges Bench of the Hon'ble Supreme Court of India in the case of ***Viacom 18 Media Private Limited vs. Union of India and Others*** reported in ***(2018) 1 SCC 761***, held as follows:

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



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As advised at present, once the certificate has been issued, there is prima facie a presumption that the authority concerned has taken into account all the Guidelines including public order.”

13. In the present case, the film presented by the petitioner was evaluated in its overall aspects. Theme and the content of the film deals with sensitive issues of religious and social norms and traditions in our society.

14. In the context of the theme of the movie, the Certification Committee and the Revising Committee have suggested excisions and modifications. The arguments of the petitioner that the impugned order dated 26.04.2023 is replica of order dated 15.03.2023 and cannot be accepted. The Committee found that the excisions / modifications originally suggested in proceedings dated 15.03.2023 is valid and the explanations submitted by the petitioner were not accepted in the impugned order. In the explanations, the petitioner has stated that certain excisions / modifications cannot be carried on, in view of the theme of the movie. It is the decision of the petitioner, which is not accepted by the Certification Committee and the Revising



Committee.

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15. That being the factum, the petitioner has to execute the excisions / modifications as per the order and represent the movie for certification. In the event of representing the movie by modifying the dialogue and scenes suitably as per the order impugned, the Committee shall reconsider the film presented by the petitioner for certification.

16. However, this Court found that the contentions of the petitioner are devoid of merits. The subjective satisfaction of the Board of Film Certification is of paramount importance, since such sensitive movies are to be certified by thoroughly analysing the social impacts and other implications. For all these reasons, the Writ Petition fails and dismissed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

18.04.2024

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Index : Yes
Speaking order
Neutral Citation : Yes



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To

1.The Chairman,
Central Board of Film Certification,
Films Division Complex, Phase – I Buildings,
9th Floor, Dr.Deshmukh Marg,
Mumbai – 400 026.

2.The Revising Committee,
represented by its Chairman,
Mrs.D.Balamurali,
Central Board of Film Certification,
No.35, Haddows Road,
Shastri Bhavan,
Chennai – 600 006.

3.The Regional Officer,
Central Board of Film Certification,
No.35, Haddows Road,
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