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

+ W.P.(C) 6408/2017

% Date of decision : 27th July, 2017

UJJWAL ANAND SHARMA Petitioner

Through : Petitioner in person

versus

UNION OF INDIA AND ANR. Respondents

**Through : Ms. Monika Arora, CGSC
with Mr. Harsh Ahuja,
Mr. Kushal Kumar and
Mr. Vibhu Tripathi, Advs.
for UOI**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition asserting that it has been filed in public interest seeks the following prayers :

“A. Issue an order, direction or writ in the nature of mandamus directing the respondent authorities to revoke/suspend under Section 5E(1) of The Cinematograph Act, 1952 the censor certificate granted to the Hindi feature film titled as “Indu Sarkar”.

B. Issue an order, direction to appoint a committee to see the entire film and submit a report to this court on the following scene found to be objectionable/defamatory in the

said film “Indu Sarkar” and to see whether the filmmakers are required to obtain NOCs from the concerned people.

C. Issue such other writ, direction or order, which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case.”

2. The factual background giving rise to the writ petition is within a narrow compass and to the extent necessary is noted hereafter.

3. The petitioner has complained that he learnt on 16th June, 2017 about a Hindi feature film “Indu Sarkar” upon release of its trailer on the Bhandarkar Entertainment official You Tube account. It is pointed out that the trailer was published with the description that the film is a *“historical drama set in the Indian emergency period between 1975 to 1977”*.

4. It is the grievance of the petitioner, the film reflects Late Smt. Indira Gandhi, former Prime Minister of India and her son Late Sh. Sanjay Gandhi in bad light and that it is just a propaganda film. This assertion is premised on the petitioner having viewed the trailer of the film. The further grievance is that the film is not an honest depiction but, on the other hand, it is a deliberate defamation with incorrect facts.

5. Admittedly these assertions on the film are premised on viewing only the trailer as the film has not been released so far.

6. It is quite clear from the above assertions that the complaint made by the petitioner is a grievance which would be personal to the persons who were being so depicted.

7. Before dealing with the question as to whether the prayer made by the writ petitioner can at all be granted, it is necessary to first consider the question as to whether the petitioner has any *locus standi* to bring the present petition.

8. The petitioner has stated that he is a strong believer in the ideology of the Congress party and is concerned about the unity and integrity as well as communal harmony between the various religious communities in the country. The petitioner submits that he is dedicated to the rule of law. It is an undisputed fact that none of the decedents or the relatives of the deceased Prime Minister or her son Late Sh. Sanjay Gandhi have agitated on any account or issue against the making or release of the film. The assertions with regard to belief in the political ideology of the Congress party by itself does not make out any entitlement to invoke the extraordinary writ jurisdiction of this court as a public interest litigation.

9. Even otherwise, Ms. Monika Arora, learned Central Government Standing Counsel, has drawn our attention to the spirit, intendment, purpose as well as scheme of the Cinematograph Act, 1952. We find that the legislature has carefully crafted out a hierarchy of authorities who are required to scrutinize and evaluate a film before it is certified for public viewing.

10. In this regard, we may extract the provisions of Section 3 which is concerned with “*Power of the Board of Film Certification*”; Section 4 which prescribes “*Examination of Films*”; Section 5 which provides for constitution of “*Advisory Panels*” to enable the board of certification to efficiently discharge its functions as well as Section 5A which is directly concerned with “*Certification of Films*” hereafter. The same reads as follows :

“3. Board of Film Censors - (1) *For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the official Gazette, constitute a Board to be called the [Board of Film Certification (Note:- Subs. by Act No.49 of 1981 (w.e.f.1-6-1983)) which shall consist of a Chairman and [(Note:- Subs. by Act No.49 of 1981 (w.e.f.1-6-1983) not less than twelve and not more than twenty five] other members appointed by the Central Government. (2) The Chairman of the Board shall receive such salary and allowance as may be determined by the Central Government, and the other members shall receive such allowances or fees for attending the meetings of the Board as may be prescribed. (3) The other terms and conditions of service of the members of the Board shall be such as may be prescribed.*

4. Examination of films - (1) *Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for ac certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner- (i) Sanction the film for unrestricted public exhibition (Note:- Omitted by ibid). 2-A. Construction of reference to any*

law not in force or any functionary not in existence in the State of Jammu and Kashmir- Any reference in this Act to any law which is not in force, or any functionary not in existence, in the state of Jammu and Kashmir, shall, in relation to that Stat, be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that State. [(Note:- Ins. by ibid) Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect or;]; (ii) Sanction the film for public exhibition restricted to adults, or (iia) [(Note:- Subs. by Act 49 of 1981 (w.e.f. 1-6-1983) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or;]; (iii) [(Note:- Subs. by Act 49 of 1981 (w.e.f. 1-6-1983) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or] (iv) Refuse to sanction the film for public exhibition. (2) No action under [the proviso to clause (I), clause (ii), clause (iia), clause (iii) or clause (iv) (Note:- Subs. by Act 49 of 1981 (w.e.f. 1-6-1983)] of sub section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.

5. Advisory panels- (1) *For the purpose of enabling the Board of efficiently discharge its functions under this*

Act, the Central Government may establish at such regional centers as it thinks fit, advisory panels each of which shall consist of such number of persons being persons qualified in the opinion of the Central Government may think fit to appoint thereto. (2) At each regional center there shall be as many regional officers as the Central Government may think fit to appoint and rule made in this behalf may provide for the association of regional officers in the examination of films. (3) The Board may consult in such manner as may be prescribed any advisory panel in respect of any film for which an application for a certificate has been made. (4) It shall be the duty of every such advisory panel whether acting as a body or in committees as may be provided in the rules made in this behalf to examine the film and to make such recommendations to the Board as it thinks fit. (5) The members of the advisory panel shall not be entitled to any salary but shall receive such fees or allowances as may be prescribed.

5-A. Certification of films. – [(Note:- Subs. by Act 49 of 1981 (w.e.f. 1-6-1983) (1) If, after examining a film or having it examined in the prescribed manner, the Board considers that – (a) The film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (I) of subsection (1) of Section 4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate ; or (b) The film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or

any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, as the case may be, a "S" certificate ; and cause the film to be so marked in the prescribed manner : Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).]. (2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India. (3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this Section shall be valid throughout India for a period of ten years. ”

11. From the statutory scheme, it is, therefore, apparent that before a certificate is finally issued to a film for public viewing under Section 5A, whereby the film has to be certified as suitable for unrestricted public exhibition with or without the prescribed endorsements, it has to undergo a multilevel and careful scrutiny by multiple bodies of experts.

12. We are informed on behalf of the respondents that so far as the film in question is concerned, that on 30th June, 2017, an application was received from the producers of the film in the Central Board of Film Certification ('CBFC' hereafter), Mumbai office. The film was scrutinized and viewed on 10th July, 2017 by an Examination Committee comprising of the Regional Officers,

CBFC as well as four other advisory panel members, two of whom were ladies. The Examination Committee recommended certain cuts in the film and unanimously passed the same for exhibition.

13. The producer of the film, however, did not accept the cuts recommended by the Examination Committee and filed an appeal before the Film Certification Appellate Tribunal ('FCAT' hereafter) in accordance with the provisions of Section 5C of the Cinematograph Act, 1952. The appellate tribunal passed an order that the film could not be examined before 27th July, 2017.

14. An application was additionally moved by the film producer before the Revising Committee of the Central Board of Film Certification. On 22nd July, 2017, the Certification Committee (headed by the Chairperson of the Central Board of Film Certification and consisting of eight other members, which included five lady members), viewed the film. Again certain excisions and modifications were recommended and the film was unanimously passed subject to the compliance with the same. It is an admitted position before us that the U/A certificate was issued on 24th July, 2017 permitting the exhibition of the film in terms thereof.

15. Similar examination and certification of a film for exhibition was upheld by the Supreme Court in the judgment reported at **(2011) 8 SCC 372, Prakash Jha Productions & Anr. v. Union of India & Ors.** wherein it was held as follows :

“26. In the present case, the Examining Committee of the Board had seen the film along with the experts and only after all the members of the Committee as also the two experts gave positive views on the screening of the film, thereafter only the certificate was granted. Therefore, since the expert body has already found that the aforesaid film could be screened all over the country, we find the opinion of the High-Level Committee for deletion of some of the scenes/words from the film amounted to exercising power of pre-censorship, which power is not available either to any high-level expert committee of the State or to the State Government. It appears that the State Government through the High-Level Committee sought to sit over and override the decision of the Board by proposing deletion of some portion of the film, which power is not vested at all with the State.”

16. It is therefore, apparent that the certificate has been issued to the film only after a careful examination which has been subjected to a further review on the request of the producer of the film by the Central Board of Film Certification, an expert body.

17. The writ petitioner makes conflicting submissions. On one hand he makes a grievance that the film would regenerate moments in the minds of people where many people lost their lives, loved ones, their homes etc during emergency period. On the other hand, a grievance is put forth that the film would cause violence because of its depiction and that the exhibition of the film is against public order and is likely to incite the people to indulge in the commission of offence and is, therefore, violative of Section 5B(1) of the Cinematograph Act, 1952.

18. In this regard, we may usefully advert to the observations on expression of similar apprehensions of the Supreme Court of India in the decision dated 28th November, 2000 in the case entitled ***Union of India v. K.M. Shankarappa*** being Civil Appeal No. 3106/1991 wherein the court observed as follows:

“We fail to understand the apprehension expressed by the learned counsel that there may be a law and order situation. Once an Expert Body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the concerned State Government to see that the law and order is maintained. In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view, form that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the Executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law.”

(Emphasis by us)

The observations of the court squarely apply on all fours to the apprehensions expressed by the petitioner.

19. We also find merit in the submissions of Ms. Arora, learned Central Government Standing Counsel to the effect that the film is yet to be exhibited and consequently, no writ of mandamus as has been sought by the petitioner for revocation of the certification

granted to it can be passed under Section 5E of the Cinematograph Act, 1952. There is no material at all on record to support the evinced apprehension.

20. It is also noteworthy that the process of making of a film would have commenced well in advance. Making of any film attracts publicity and it is not possible that, if the petitioner was really a public spirited person, he wouldn't be aware of the making of the film especially having regard to its subject matter.

21. It is an admitted position that the release date of the film was announced on 27th May, 2017 and even its trailer was released on 16th June, 2017. The petitioner has sought to invoke the writ jurisdiction of this court only on 26th July, 2017, which is on the eve of its release which is slated for 28th July, 2017. Release date of films are fixed by the film makers after consideration of several ponderables and imponderables.

22. Huge amounts would necessarily be involved in the making of the film. Most probably, the production may be a result of investment by third parties who are not directly concerned with production and making of the film but involved in its financing and profits from the exhibition of the final certified product. This court exercising extraordinary jurisdiction is bound to consider balance of convenience and interests of both sides. Clearly, the writ petition ought not to be entertained on grounds of delay and laches, balance of convenience as well as interests of justice are against the petitioner. It is also impossible, so far as interdiction of release of

a film is concerned, to balance equities, as the losses to the producer and financier of the film would be completely irreparable and insurmountable.

23. It is noteworthy that in the present case, the petitioner has arrayed only the Secretary of the Ministry of Information & Broadcasting to the Government of India and the Chief Executive Officer (Additional Charge) Central Board of Film Certification as party respondents. The director, producer of the film and the other concerned parties who would be the persons directly affected by any order of this court have not even been impleaded. We are not satisfied that this is a *bonafide* omission.

24. We may also in this regard advert to an order dated 24th July, 2017 passed by the Division Bench of the High Court of Judicature at Bombay in *Writ Petition (Lodging) No.1947 of 2017 Priya Singh Paul v. Madhur Bhandarkar & Ors.* which was a petition filed by a person claiming to be a family member of Late Sh. Sanjay Gandhi making a challenge similar to that made in the present petition was rejected for similar reasons.

25. In para 13 of the said judgment, the Bombay High Court has extracted the disclaimer which has been issued by the producers of the film which reads thus:

“Disclaimer :-

“all characters and incidents portrayed and used in the film are fictitious and any resemblance to reality is pure co-incidence. Any similarity or resemblance to any

person (living or dead), character or history is entirely and purely coincidental. Neither the applicant of the film nor the producer, the director, the artist or any other person associated with the film intends to outrage, insult, wound, offend or hurt any religion or religious sentiments, beliefs or feelings of any person(s), community or class of person(s) nor do they intend to malign, defame or slander any religion, country, community, person (s) or class of persons in anyway. The use of certain expression in the film are purely for dramatizing the performances and incidents portrayed in the film and the makers of the film and any other persons associated with the film do not support the use of such expression by any person.”

26. By the said judgment, the Division Bench of the Bombay High Court has been persuaded to reject the writ prayer *inter alia* for the reason that the petitioner therein had noted the statement by the makers of the film that it is based upon 30% facts and 70% of fiction which was a material fact. The observations of the Bombay High Court in paras 10 and 11 of the judgment are topical and read thus :

“10. In this matter, the Court needs to consider the vague allegations about plot/story of the film on and around the particular characters during the background of specific emergency period. The facts of emergency and related reports and the books are not in dispute. It is a matter of many records. The film making itself is nothing but a creation of story/characters based upon the relative background of any of the era. The Censor Board ultimately is the authority to deal with such effect of film on the society, even in cases of stated hurting sentiments in such situation.

11. We are not expressing anything on the merits of allegations so raised revolving around the stated statute. But we are inclined to take this unclear position to decide the Petitioner's prayers at this stage itself. The statement that the film is based upon 30% facts and 70% of fiction cannot be overlooked. The fact and the fiction just cannot be dissected. The fact and fiction combined together and the character and story is created, so the film. There is no case of judicial review, once the expert statutory authority has granted the due certificate"

27. We see no reason in the present case to take a view divergent from that of the Bombay High Court in the above judgment.

28. For all the above reasons, especially given the fact that expert statutory authorities at multiple levels have examined the film and a certificate in accordance with law has been issued for exhibition of the film, no case for judicial review is made out.

This writ petition is consequently dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 27, 2017/kr