

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.12.2018

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21946 of 2018
and
W.M.P.Nos.25735 & 25736 of 2018

Varaaki

..Petitioner

vs

The Regional Officer
Central Board of Film Certification
No.35, Haddows Road
Sasthri Bhavan, Chennai - 6

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, by call for the records and to quash the impugned order passed in No.IA030607201805642 dated 14.08.2018 and to direct the respondent to issue 'A' Certificate without any modifications and excisions as mentioned in the impugned order.

For Petitioner : Mr.V.Balu

For Respondent : Mr.J.Madhanagopal Rao, SPC

O R D E R

The Central Board of Film Certification order dated 14.08.2018 is under challenge in the present writ petition.

2.The Certificate of "A" with Excisions / Modifications are issued by the Central Board of Film Certification. Aggrieved from and out of the reasons stipulated in the order impugned, the writ petitioner is constrained to move the present writ petition.

3.The learned counsel for the writ petitioner articulated his case by stating that the actions of the respondent are selective and they have picked the petitioner for the purpose of depriving his right to exercise the Freedom of Speech and Expression, has enshrined under the Constitution of India.

4.It is contended by the petitioner that the petitioner is a registered member of the Tamil Nadu Producers Council and also a member of the South Indian Film Artists Association and have an

own production house viz. Sri Varaaki Amman Pictures duly registered in the said address and produced a feature Tamil film viz. 'Siva Manasula Pushpa'. The said Film was produced and directed by the writ petitioner and he himself acted as a hero in the above said Film. The story and screenplay of the film is also by the writ petitioner and after completing the entire production as per the rules and regulations prescribed under the Cinematograph Act 1952, the petitioner submitted the above said feature film before the respondent Board for certification under Section 4(1) of the Cinematograph Act. The application in this regard was made by the writ petitioner on 09.07.2018 before the respondent.

5.The Film was screened for certification. The advisory panel after viewing the film has suggested that 'A' Certificate will be given to the film with certain excisions and modifications numbering into 13 and the said communication was informed to the petitioner on 27.02.2018, in their communication No.1A030607201805642. Having aggrieved with the above said communication, the petitioner has gone to the revising committee, challenging the said communication and the film was viewed by the revising committee consisting of 10 members and the previous communication dated 23.07.2018 was confirmed by the revising committee on 14.08.2018, stating that the revising committee has come to the conclusion that the film is not suitable for unrestricted public exhibition but may be suitable for public exhibition restricted to adults provided after carrying out the excisions and modifications in the film listed in the Annexure to the impugned order and accordingly, directed to carry out the order, if at all the film has to be released.

6.The learned counsel for the petitioner emphasized that the respondents had exceeded their powers in imposing Excisions and Modifications. The Title namely 'Siva Manasula Pushpa' is common name and by citing the name, the petitioner cannot be prevented from naming the title for his feature film. The name 'Siva' is a most common name in our country and therefore, the director has never meant any particular person and so also, the name 'Pushpa' is also a common name and the director has never made any indication in respect of any individual person. The common names utilized as title in the Movie, can never be objected and even in earlier occasions, the respondent had cleared such names and similar title in many other occasions.

7.The learned counsel for the petitioner states that yet another Movie in the name of 'Siva Manasula Sakthi' has already been granted with the certification and the Movie was released and run popularly.

8.This being the factum, the present objection raised is on

mala fide intention and on some personal motives. Thus, the impugned order is liable to be scrapped. The respondents have not attributed any acceptable reasons with reference to the provisions of the Cinematograph Act and therefore, the impugned order is untenable in law. The order infringes the fundamental right of the writ petitioner in naming his own feature film and the story written by him for the feature film.

9. The learned counsel appearing on behalf of the respondent disputed the entire contentions raised on behalf of the writ petitioner by stating that undoubtedly, the petitioner submitted his Movie for certification before the respondent Board. The Movie was viewed by the authorities concerned and they have arrived a conclusion that according to the Guideline 2(xviii) issued by the Central Government under Cinematograph Certification Rules, 1983, "visuals or words involving defamation of an individual or a body of individuals or contempt of Court are not presented". Thus, the petitioner was directed to replace the character names namely 'Siva' and 'Pushpa' including the title.

10. It is further submitted that as per Guideline No.6, "The Board shall scrutinize the titles of the films carefully and ensure that they are not provocative, vulgar, offensive or violative of any of the guidelines". Usually, the Committee examines the titles and does not recommend for replacement of the title unless or otherwise there is a solid reason and only in the rarest of the rare case, it recommends for a change in title. After examining the film, both the Examining and Revising Committee was of the strong opinion, that, the content and the treatment of the film 'Shiva Manasula Pushpa' may make the viewers to co-relate the recent happenings. Hence, the Committee recommended for removal of the words 'Shiva' and 'Pushpa' throughout the film including the titles.

11. The story depicts the two characters, who are Members of Legislative Assembly, elected by the People of India. The Members of Legislative Assembly hold high office and the characterization of such high office bearers in a bad light would lead to a wrong precedence and if objected by any person of similar name, holding high office as MP / MLA, the issue would further get complicated.

12. It is pertinent to mention that the depiction of many incidents shown in the film resembles the current happenings in the society. Hence, the Committees' recommended insertion of disclaimer as the story is a fiction. The Board also agrees with the fundamental rights of freedom of expression guaranteed by the Constitution of India, but, the "freedom of expression" should not be at the cost of defamation of any other individual.

13. Considering the rival submissions as advanced by the respective learned counsels appearing for the writ petitioner and the respondents, this Court is of an opinion that there cannot be any second view in respect of the fundamental rights enshrined under Part III of the Constitution of India to the citizen of this Great Nation. Undoubtedly, Freedom of Speech and Expression is a valuable right in our great Nation and nobody can infringe the right of the citizen none other than the respondent Board. However, the Freedom of Right or Expression and the Fundamental rights are subject to certain reasonable restrictions, which can be imposed, if the State / Union is of an opinion that it infringes the rights of other citizens of this Great Nation. Thus, every constitutional right / fundamental right is to be enjoyed / exercised without affecting the rights of other co-citizens of this Great Nation. Rights and duties are corresponding terms. When we speak about the fundamental rights / statutory rights enshrined in the statutes and Constitution of India, we equally bound to consider the fundamental duties enshrined under the Constitution of India in Article 51-A of the Constitution of India.

14. More specifically, Article 51-A, Sub clause (e) of the Constitution of India enumerates that "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women"

15. The cogent reading of the duties enshrined under Article 51-A of the Constitution of India, this Court is of a firm opinion that the brotherhood and respecting the rights of all other citizens is also enshrined under the Constitution of India. In this perspective, statutes are enacted to ensure that, while exercising or enjoying the fundamental rights by one citizen, the same does not infringes the rights / fundamental rights of any other citizen of this great Nation. When the terms are corresponding in nature and it affects the other's rights, such statutes are upheld by the constitutional Courts in many occasions. In this context, the principles of reasonable restrictions has been derived by the Courts on several occasions. The concept of reasonable restrictions are formulated and being implemented by the State / Union with reference to these provisions of the Constitution of India and therefore, this Court is of the considered opinion that the respect to the other citizen with reference to their rights and fundamental rights are one of the aspects to be considered by all these competent authorities, while granting certification with reference to the Cinematograph Act, 1952.

16.The learned counsel for the writ petitioner made a submission that the disclaimer is a mandatory provision and the story and the characters are imaginary and therefore, the respondents ought not to have raised any objections in this regard. In respect of Column No.1 in the impugned order, the petitioner has already agreed to carry out the changes and the said condition is already there in their film.

17.May that it be. This Court is of an opinion that the other objections raised is also a concern of the respondent Board. The petitioner states that such imaginations of a writer or his writings can never be objected under the guise of certain characters or certain incidents. In such an event, it may not be possible for a potential writer to create stories / screenplay or produce feature films in this Country. There are ever so many characters and ever so many objections and if those objections are considered by the board, then no story will escape from the clutches of the ideas of the board members. Such an argument advanced may be attractive. However, all such arguments are to be established subject to the provisions of law and the restrictions imposed thereon. There is no limit for imaginations, presumptions and assumptions. But, all such imaginations or presumptions are to be tested with reference to the provisions of the Act as well as to be tested with reference to the sentiments of the larger sector of the people. The opinion of the members of the Board can be tested only with reference to the original documents namely, the Movie in the present case.

18.However, this Court cannot adjudicate such complex facts and circumstances under Article 226 of the Constitution of India. The disputed facts and circumstances of the case with reference to the story or the feature film is to be adjudicated only with the original documents and before the competent authorities. The Hon'ble High Court cannot venture into such an action of considering the original documents when it is not placed before this Court and this Court has to provide an opportunity to the writ petitioner to approach the Tribunal constituted under the Act itself.

19.Bybypassing the Tribunal in a routine manner is certainly impermissible. The statutory bodies created under the Act must be respected by the Constitutional Courts. All authorities / Tribunals constituted under the statute must be allowed to exercise their powers in accordance with the provisions of law / Act by scrutinizing the documents and by providing an opportunity to the parties concerned. If those powers are taken away by the High Court, then this Court is afraid that the purpose, for which, such statutory provisions and appeals are created would be defeated. The Appellate authorities /

Tribunals are provided in the statute in order to provide an opportunity to the aggrieved persons, to place their records / documents and other informations, enabling them to adjudicate the factual aspects on merits and in accordance with law. If that power is taken away without any valid reason, then this Court is of an opinion that we are not allowing the bodies to function created under the statute and the said stand is unacceptable to the Court.

20.The learned counsel for the petitioner undoubtedly raised a plea that when there is a violation of principles of natural justice, an aggrieved person can approach the Hon'ble High Court under Article 226 of the Constitution of India. This Court is of an opinion that in large number of cases, the ground of violation of principles of natural justice is pleaded. However, the statutory bodies are exercising the quasi-judicial power and they are empowered to adjudicate all the legal grounds including the ground of violation of principles of natural justice. The powers conferred under the Act to the Tribunal can never be undermined and therefore, the petitioner ought to have approached the Tribunal by placing all the original documents and the evidences before the Tribunal for effective adjudication of his case.

21.This Court, in respect of exhausting the alternate remedy has settled the legal principles in the case of M/s.Hyundai Motor India Limited Vs. The Deputy Commissioner of Income Tax in W.P.No.22508 of 2017 dated 16.07.2018 and the relevant paragraphs are extracted hereunder:

"19.Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures

contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

- (1) The supremacy of the Constitution.
- (2) Republican and Democratic form of government and sovereignty of the country.
- (3) Secular and federal character of the Constitution.
- (4) Demarcation of power between the Legislature, the executive and the judiciary.
- (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
- (6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973] : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three

organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs-- legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power

may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."

20. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and

exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained

1. In *City and Industrial Development Corporation v. Doshi Aardeshir Bhiwandiwalla and Ors.* MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. *Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors.* (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*; *Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.*)

3. *Commissioner of Income Tax and Ors. v. Chhabil Dass Agarwal*, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the

interregnum.

5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2

SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

22. In this view of the matter, the writ petitioner has not established any ground for the purpose of considering the relief as such sought for in the present writ petition and accordingly, the following orders are passed:

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The writ petitioner is at liberty to approach the Film Certification Appellate Tribunal (FCAT), constituted under the Cinematograph Act 1952, within a period of two weeks from the date of receipt of a copy of this order. On receipt of any such appeal from the writ petitioner, the Film Certification Appellate Tribunal (FCAT) shall adjudicate the same on merits and in accordance with law by affording an opportunity to the writ petitioner and dispose of the matter within a period of four weeks thereafter.

23. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Officer
Central Board of Film Certification
No.35, Haddows Road
Sasthri Bhavan, Chennai - 6

2.The Film Certification Appellate Tribunal,
Room No.116,
A Wing, New Delhi - 110 001,
Near Shastri Bhavan.

+1cc to Mr.V.Balu, Advocate, S.R.No.86571

+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.87284

W.P.No.21946 of 2018

GJII(CO)

rrs 07/01/2018



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