

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6965 OF 2019

Children's Film Society, India	...	Petitioner
versus		
Central Board of Film Certification, (CBFC) Mumbai and Anr.	...	Respondent

Mr.Yashodeep Deshmukh i/b Ms.Vaidehi
P. Deshmukh for the Petitioner.

Mr.Rajiv Chavan, Senior Advocate a/w Mr.
M.S.Bhardwaj, Mr.P.J.Khosla for
Respondent Nos.1 and 2.

CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.

DATE :- SEPTEMBER 17, 2019

P.C. :-

1. This writ petition under Article 226 of the Constitution of India is directed against the order dated 1st May, 2019 rejecting the petitioner's Appeal No.11 of 2019.

2. The further direction sought is to restore this Appeal to the file of the Film Certification Appellate Tribunal for a decision on merits and in accordance with law.

3. On this writ petition, which was extensively argued on several occasions prior to today, apart from the legality and validity of the order dated 1st May, 2019, the contentions of the parties proceeded on the merits of that appeal. The merits were that the Cinematograph Act, 1952 does not make any distinction

between a film meant for viewing by children or a film meant for viewing expressly by adults. Our attention was invited to the definitions in Section 2 of the terms “adult” and “film”, as also the definitions of the terms “certificate” and “prescribed” to urge that there is a Board of Film Certification which erroneously assumes itself to be a “Censor Board”. That Board is constituted so as to examine films in a prescribed manner and to thereafter sanction the same for unrestricted public exhibition. The proviso to clause (i) to sub-section (1) of Section 4 of the Act says that having regard to any material in the film, if the Board is of the opinion that, having regard to the content of the film, it is necessary to enter a caution or advisory to parents or guardians of any child below the age of twelve years to decide whether such child should be allowed to see such a film, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect. We are not concerned with clauses (ii), (ii-a), (iii) and (iv) for, in the case before us, the controversy is not that the Board has refused to sanction the film for public exhibition. The Board has said that the film can be viewed, but only in terms of the proviso to clause (i) to sub-section (1) of Section 4. It is that certification and endorsement that the petitioner is aggrieved by and against which the Appeal was preferred. The petitioner is none other than the “Children’s Film Society, India”. It would submit that the

certification would mean that the petitioner is directed to make a film or present a work in the manner desired by the Board, else the Board would not certify it. In this case, the film maker and the petitioner have accepted the two cuts or excisions suggested by the Board and after those cuts are made, the expectation of the petitioner was that the film would be sanctioned for unrestricted public exhibition. Meaning thereby, the certification would be a “U” certificate. However, the Board maintains that it will not be able to grant a certification as desired leaving out the caution to be endorsed in terms of above proviso. Thus, the Board insists on the proviso to be abided by and this is a fit matter where it can invoke the proviso so as to issue a “U/A” certificate. The contra plea is that the type of certification, namely, “A”, “U”, “U/A” does not enable the Board to dictate the content and brand the work as fit for viewing by children or adults.

4. Once we had before us everything on merits and the version of both sides was sought to be supported by relying on the Act and the rules, the judgments of the Courts, on the previous occasion, we perused the petition carefully. The petition itself does not project the larger controversy which was sought to be placed during oral arguments. The petition restricts itself to the legality and validity of the order dated 1st May, 2019. The grounds also do

not include any challenge either to the provisions of the Act or the rules or the guidelines, far from raising the plea now raised, that the acts of the Board amount to infringement or violation of the mandate of Article 19(1)(a) of the Constitution of India and that the decision of the Board is not saved by clause (2) of Article 19 of the Constitution of India.

5. The petition is also not presented by the author, writer, or director, but by the Children's Film Society of India. In other words, it is only by the producer and not by the author, writer or director that the writ petition is filed.

6. When the matter was again placed before us, we did not prohibit the making of any application to amend the writ petition to incorporate or insert a larger challenge, but we found that after the petitioner accepted the two cuts, the work has undergone a change. The petitioner has instructed his advocate to state that after the acceptance of the two cuts, the few oral suggestions would be considered and the petitioner would present a fresh or revised work by making an application in terms of Rule 21 of the Cinematograph (Certification) Rules, 1983 and that should be considered by the Board, uninfluenced by anything that is stated and observed earlier or its stand as reflected in the affidavits filed before this Court on merits.

7. On such a suggestion coming from the petitioner, we put it to Mr.Rajiv Chavan, learned senior counsel appearing on behalf of the Board, and Mr.Chavan sought time to take instructions.

8. After seeking instructions from the competent official of the Board, Mr.Chavan says that the Board is not averse to accepting the petitioner's application and the Board would then assume that the Cinematograph (Certification) Rules, 1983 permits such a course. In that regard, it would invoke the explanation below sub-rule (5) of the said rules, particularly Rule 21. It would examine the application and the work afresh and take a decision strictly in accordance with law.

9. However, Mr.Chavan says that the petitioner should not be permitted to reopen the issue of maintainability of the appeal and it should accept the order of the appellate authority dated 1st May, 2019 in the facts and circumstances peculiar to this case.

10. We have perused that part of the order carefully. That order was passed on an Appeal which was preferred challenging a decision of the Board not to grant a certificate as desired by the petitioner ("U" certificate), but a "U/A" certificate. However, the petitioner is now making a fresh application by accepting some cuts as are suggested, but not the entire course as opined by the

Board. The petitioner is ready and willing to insert two cuts and also to make other changes and modifications in the film, if so deemed fit, to seek a fresh certificate in terms of Rule 21 by making another application. Now, a fresh application is proposed to be filed and leave is sought for that purpose.

11. On this, Mr.Chavan says that there is no embargo in law. If the application is made as suggested by this Court, then that application will be accepted and the process as contemplated by the law would be put in motion. Thereafter the Board will take recourse to such powers as are permissible in law. However, the Board will take an independent decision as the work would be a fresh one and to be precise, a revised version of the film and that would be taken as a fresh film. In the process of scrutinising that application, the Board will not be influenced by dismissal of the petitioner's appeal or the stand taken on merits in the affidavit filed in this Court. The Board would take a dispassionate and independent view of the matter, uninfluenced by what is being stated before the Court. The Board will also not go by the opinion expressed during the course of the arguments before this Court or in the reports of the matter appearing in the newspapers.

12. We would expect the petitioner to accept similar course and not be influenced by anything that is argued, observed during the

course of the arguments or reported in the newspapers or social media. If the work has to be scrutinised strictly in accordance with law, then the parties have to follow certain norms and discipline. The application will be, therefore, treated in terms of the rules as a fresh film and decision is expected to be taken by the Board as expeditiously as possible and within a period of four weeks from the date of receipt of the revised work/ fresh film.

13. The petitioner's advocate, on instructions, states that within a period of two weeks, such a fresh film/revised work will be forwarded accompanied by the necessary documents and fees.

14. We expect the Board not to take a technical view of the matter and dismiss the application only because it does not comply with some procedural aspects highlighted in the rules.

15. Needless to clarify that the contentions of both sides on merits are kept open for being raised at an appropriate stage in connection with the revised work/fresh film and related matter as deemed fit and proper.

16. The writ petition stands disposed of accordingly.

(S.C.DHARMADHIKARI, J.)

(G.S.PATEL, J.)