

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

117

CWP-25295-2022
Date of Decision: 09.11.2022

RANJIT SINGH POOHLA

... Petitioner

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. G.B. Gilhotra, Advocate
for the petitioner.

Mr. Dheeraj Jain, Central Government Counsel with
Ms. Gehna Vaishnavi, Advocate for respondents No.1 to 4.

Mr. Saurav Verma, Addl. A.G., Punjab
for respondents No.5 to 7.

Mr. Amit Jhanji, Sr. Advocate with
Mr. Shashank Shekhar Sharma, Advocate
for respondents No.8 to 14.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition invokes jurisdiction of this Court for cancellation of the Certificate granted by Central Board of Film Certification granted to the Punjabi Movie titled 'Masand' stated release on 10th of November 2022 on the ground that the same is likely to promote against the values, religious symbols and sentiments of Sikh religion and promote community hatred as the trailer of the movie shows the character of villain to draw similarity with life of a deceased Jathedar Ajit Singh Poohla (Head of Nihang Sect, Tarna Dal), who was murdered by some radical elements and glorifies the murderers to have done the right thing.

The averments as contained in the petition shows that the petitioner, who is present Jathedar/Head of Nihang Singh Jathebandi Group namely Tarna Dal Misl Shaheed Bhai Taru Singh Poohla and is a practising Nihang following all the customs and rituals of a life of Nihang Sikh. It is averred that there are various groups of Nihangs living in Punjab and all across the country with their distinct identity customs and rituals. The aforesaid Nihang groups have always promoted peace and harmony in society and abide by the laws of the country.

The petitioner claims to have watched the trailer of the aforesaid movie titled 'Masand' on a YouTube channel. The movie is promoted by its producer Living Dreams Entertainment and G.K. Digital. The portrayal of villain of the movie draws resemblance from Ajit Singh Poohla, the former Jathedar of Tarna Dal. It is pointed out that Chief of Nihang Jathebandi wear a Turban in a specific style giving a distinct identity showing the ranking of the Jathedar. He is shown in the movie wearing a Pharla (Turban) in the manner worn by Tarna Dal which is strikingly similar to the Pharla worn by Leader of their Nihang Singh Jathebandi and such portrayal is to the detriment of the tenets of Sikhism. It is further contended that misleading depiction of real life character of Baba Ajit Singh Poohla has been undertaken in the movie for vilification of their head, which is defamatory in context and that it seems to justify and glorify an act of murder. Additionally, it is pointed out that the poster of the movie itself claims to be inspired by true events and uses the claim 'Sadde Qatal Nahi Sodhna Kehande Ne' (i.e. we don't call it a murder but a correction).

It has been claimed that the feelings of the Nihang Singhs and people of Punjab in generally would be greatly hurt in the event the Nihang Sikhs are depicted in a negative manner and the same is likely to reduce the status, respect and image of the Nihang Singhs, notwithstanding the sacrifices made by them.

Notice of motion.

Mr. Dheeraj Jain, Advocate enters appearance on behalf of respondents No.1 to 4 and accepts notice.

Mr. Saurav Verma, Addl. A.G., Punjab and accepts notice on behalf of respondent No.5 to 7 and accept notice.

Mr. Amit Jhanji, Sr. Advocate with Mr. Shashank Shekhar Sharma, Advocate appears on behalf of respondents No.8 to 14 and accept notice.

The counsel for the respondents contend that going by the averments contained in the petition and the fact that only a legal question arises for consideration, there is no necessity for filing of any separate responses and that they are ready for arguments on the basis of averments raised herein. Hence, the arguments were heard without any formal written responses.

Counsel for the petitioner has vehemently argued that Nihang Singhs are integral to Sikh religion and any negative portrayal of a Nihang Jathedar would be insinuating the practising Sikh. It is contended that the Jathedars are well recognized and accepted religious personalities and any poor description of the Jathedars shall bring the entire Sikh religion in bad light. He further contends that the movie in question claims to be based on true events and as per the petitioner relates to the life of former Jathedar of Tarna Dal

namely Ajit Singh Poohla, yet there is no disclaimer by the film producer/directors that the 'movie has no resemblance to any person living or dead'. He contends that the depiction by the costume assigned to the villain in the movie is identical to the customary dresses worn by Jathedars of Tarna Dal and thus relates the villain to the aforesaid Nihang Community. He further argues that the movie glorifies violence and also holds it in a high spirit. The act of mob justice is glorified and a gruesome murder is portrayed as an act of correction. It seeks to evoke sympathy for the violator of Rule of Law instead of the victim. It is submitted that the petitioner being the next Jathedar is the next kin of the deceased Ajit Singh Poohla and as the movie depicts Ajit Singh Poohla in bad light, he has every right to raise a challenge to the release of such movie as well as the certificate granted by the Central Board of Film Certification. Reliance is placed on the Madras High Court Judgment passed in the matter of **K. Ganeshan Vs. Film Certification Appellate Tribunal dated 29.09.2016** to contend that where the movie portrays life of a individual and is likely to incarcerate him or the next of kin of family members, such certification ought to have been declined by the Film Certification Board. Relevant extract of the judgment of the Madras High Court is reproduced hereinafter below

“54. Thus, the film having been made based on an individual's life, undoubtedly, would have a serious impact on the right to privacy of the individual and their family and kith and kin. If the portrayal pertained to an indefinite body of persons or is an outcome of a research done based on a fictional theme or based on a hearsay, it would have been a different matter Therefore, in the light of the candid admission made by the petitioner, this Court has no hesitation to hold that the film depicts the lift of a

person, who has left behind a family and undoubtedly would invade the right to privacy of the character depicted in the film as well as her family members.

55-57 XXXX XXXX XXXX

58. The petitioner would state that the news about Ms. Iasi Priya is already in the public domain and the petitioner is not the first person, who is propagating the same and therefore, there is no ground for prior restraint by the CBFC or to grant an injunction against releasing the film.

59-64 XXXX XXXX XXXX

65. Section 5B(2) of the Act, authorises the Central Government to issue directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under the Act in sanctioning films for public exhibition and these guidelines were held to be in tune with the reasonable restrictions provided under Article 19(2) of the Constitution. Thus, the picture cannot be certified if it lowers from the moral standards of those to see it or if it creates in the mind of the audience a sympathy towards crime, towards wrong doing or evil. That apart, due regard should be had to the standards of the country and the people to which the story relates, and it shall not be so portrayed so as to deprave the morality of the audience. The prevailing laws shall not be ridiculed as to create sympathy for violation of such laws.”

Mr. Dheeraj Jain, Sr. Standing Counsel for respondents No.1 to 4 including the Central Board of Film Certification has, however, argued that the certificate No.DIN/2/7/2021/Delhi was granted for the aforesaid movie on 02.07.2021. It is contended that the film is fictional in nature. It thus necessarily implies that it does not relate to the life of any person living or dead and that any co-relation can merely be incidental. He further contends that this writ petition does not raise a challenge to the certificate that was

granted by the Central Board of Film Certification and that prior to issuance of the aforesaid certificate, a member of Sikh religion, who was well versed with the tenets of Sikhism, was invited as an advisory expert and no objection of any nature whatsoever was raised by the subject expert at that time. It is also contended that the Central Board of Film Certification had duly taken into consideration the guidelines prescribed under the Cinematograph Act, 1952 and Regulations framed thereunder prior to issuance of the certificate for the screening and release of the movie. Accordingly, there is no reason why such certification ought to be cancelled without any challenge to the same or why the screening of the movie ought to be stayed.

Counsel appearing on behalf of the private respondents has raised an objection to the maintainability of the present petition in the absence of any challenge to the certificate of release granted by the Central Board of Film Certification. He has drawn attention to the provision contained in the Cinematograph Act, 1952 and also in the Cinematograph (Certification) Rules, 1983 and guidelines for certification of films for public exhibition notified by the Government. The relevant provisions of the Cinematograph Act, 1952 are extracted as under:

“4. Examination of films. –

(1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a 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:

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) 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) 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 (n), clause (-a), clause (a) or clause (it)] 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 to efficiently discharge its functions under this Act, the Central Government may establish at such regional centres 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 to judge the effect of films on the public as the Central Government may think fit to appoint thereto.

(2) At each regional centre there shall be as many regional officers as the Central Government may think fit to appoint, and rules 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-

[(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 (1) of sub-section (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 year.

5-B. Principles for guidance in certifying films. -

(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of "the Sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

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5-D XXX XXX XXX XXX

5-DD XXX XXX XXX XXX

5-E. Suspension and revocation of certificate (1) Notwithstanding anything contained in sub-section (2) of section 6, the Central Government may, by notification in the Official Gazette, suspend a certificate granted under this Part, for such period as it thinks fit or may revoke such certificate if it is satisfied that-

(i) the film in respect of which the certificate was granted, was being exhibited in a form other than the one in which it was certified, or

(ii) the film or any part thereof is being exhibited in contravention of the provisions of this Part or the rules made thereunder.

(2) Where a notification under sub-section (1) has been published, the Central Government may require the applicant for certificate or any other person to whom the rights in the film have passed, or both, to deliver up the certificate and all duplicate certificates, if any granted in respect of the film to the Board or to any person or authority specified in the said notification.

(3) No action under this section shall be taken except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a certificate remains suspended under this section, the film shall be deemed to be an uncertified film.”

Further, the relevant extract of Rules 32 and 33 of the Cinematograph (Certification) Rules, 1983 as reproduced as under:

“32. Re-examination of certified films

(1) Where in respect of a film, which has been certified for public exhibition, any complaint is received by the Board, the same shall be forwarded to the Central Government.

(2) The Central Government may, if it considers it necessary so to do, direct the Chairman to re-examine any film (in respect of which a complaint has been received by it directly or through the Board) in such manner and with such assistance as may be specified in the direction.

(3) The Chairman may, for the purpose of re-examination aforesaid, require by written notice the person who made the application for certification of the film or the person to whom the rights of ownership or distribution in the film have passed, to arrange at his expense to deliver a print of the certified film to

any specified Regional Officer within such time as may be specified in the notice for the purpose of re-examination.

(4) The place, date and time of such re-examination shall be determined by the Chairman.

(5) The Chairman shall forward his opinion together with the print of the film in relation to which a certificate was issued earlier to the Central Government who may after such enquiry as it deems fit, pass such orders thereon in exercise of the revisional powers under section

(6) The provisions of this rule shall apply only in cases where the revisional powers are exercisable by the Central Government under section 6.

33. Alteration of film after issue of certificate-

(1) When a film is altered by excision, addition, colouring or otherwise after it has been certified under these rules, it shall not be exhibited unless the portion or portions excised, added, coloured or otherwise altered, have been reported to the Board in Form III in the Second Schedule and the Board has endorsed the particulars of the alteration or alterations on the certificate.

(2) For the purpose of exercising its powers under sub-rule (1), the Regional Officer shall appoint an Examining Committee to examine at the expense of the applicant, the reel or reels of the film in which the portion or portions are altered in such manner and with such assistance as he may deem fit and where the Examining Committee considered it necessary so to do, it shall re-examine the entire film.

Provided that where a film is altered by excision or by the change of a coloured film into black and white version only it shall not ordinarily be necessary to appoint an Examining Committee unless the Regional Officer in any case otherwise directs.

(3) *The Examining Committee appointed under sub-rule (2) shall consist of "[one member] of the Advisory Panel and an examining officer.*

Provided that where the examining officer is unavoidably absent at the examination of the film or any reel thereof, the Examining Committee shall consist of two members of the Advisory Panel.

(4) *Pending examination of the altered film under this rule, the applicant shall not exhibit the film incorporating the proposed alteration.*

(5) *Where the film or any portion thereof as the case may be, is re- examined under this rule, the Chairman shall unless for reasons to be recorded in writing, he declines permission for the alteration, make suitable endorsement in the certificate granted in relation to the film."*

Further, the relevant "guidelines for certification of films for public exhibition" are reproduced hereinafter below:

"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;*

(b) to (e) *XXXXXXXXXXXXXXXXXXXX*

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

(i) *anti-social activities such as violence are not glorified or justified;*

(ii) *the modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted,*

(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) showing abuse or ridicule of physically and mentally handicapped persons; and*
- (c) showing cruelty to or abuse of, animals are not presented needlessly.*
- (iv) pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of desensitising or dehumanising people are not shown;*
- (v) scenes which have the effect of justifying or glorifying drinking are not shown;*
- (vi) scenes tending to encourage, justify or glamorise drug addiction are not shown;*
- [(vi-a)scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown;]*
- (vii) human sensibilities are not offended by vulgarity, obscenity or depravity;*
- (viii) such dual meaning words obviously cater to baser instincts are not allowed;*
- (ix) scenes degrading or denigrating women in any manner are not presented;*
- (x) scenes involving sexual violence against women like attempt to rape, rape or any form of molestation, or scenes of a similar nature are avoided, and if any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown;*
- (xi) scenes showing sexual perversions shall be avoided and if such matters are germane to the theme, they shall be reduced to the minimum and no details are shown;*

- (xii) *visuals or words contemptuous of racial, religious or other groups, are not presented;*
- (xiii) *visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes are not presented;*
- (xiv) *the sovereignty and integrity of India is not called in question;*
- (xv) *the security of the State is not jeopardised or endangered;*
- (xvi) *friendly relations with foreign States are not strained;*
- (xvii) *public order is not endangered;*
- (xviii) *visuals or words involving defamation of an individual or a body of individuals, or contempt of Court are not presented.*

Explanation-*Scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of Court will come under the term "contempt of court"; and*

- (xiv) *National symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).*

A reference is also made to provisions of Article 19 of the Constitution of India.

“19. Protection of certain rights regarding freedom of speech etc.

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b-g) XXXX XXXX XXXX XXXX

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of

the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3) to (6) XXXX XXXX XXXX XXXX”

It is denied by the learned counsel for the private respondents that the community of Nihang Singhs is Sikh Religion. He further argues that the movie is not based on life of the person as is being claimed and the promotion posters of the movie claim only that it is inspired by true events. Besides, a disclaimer that ‘It is a work of fiction’ has also been made before the movie commences. Hence, it is self assessment by the petitioner that portrayal of the role of villain is based on Jathedar Ajit Singh Poohla by referring to events or costumes, which are rather generalized. It is also pointed out that the petitioner has no locus standi to institute the present petition and writ petition would also not be maintainable in the given circumstances for want of challenge to the certificate issued. He further contends that the present petition is based on perceptions and pre-emptions of the petitioner, who has not seen the movie and is relying only upon the trailer to argue that it relates to a former Jathedar of Tarna Dal.

Reference is also made to the judgment of Hon’ble Supreme Court in the matter of Indibily Creative Private Ltd. and others Vs. Government of West Bengal reported as (2020) 12 SCC 436. The relevant extract of the same is reproduced hereinafter below:

“4. Bhobishyoter Bhoot has a UA certification for public exhibition, issued by the Central Board of Film Certification on 19 November 2018. Prior to its national launch, the film was slated for release in Kolkata and some districts of West Bengal on

15 February 2019. For nearly three weeks prior to its release, the film was promoted on electronic, print and social media to evince interest among its prospective viewers. On 11 February 2019, four days prior to its scheduled release, the second petitioner is stated to have received a call from a number which was displayed as 9830720982 on his cell phone. According to the petitioners, the caller identified himself as Dilip Bandopadhyay of the State Intelligence Unit of the Kolkata Police. The caller stated that his office had received some information regarding the film, which he was forwarding shortly. Soon enough, the second petitioner received a letter from the State Intelligence Unit calling upon him to arrange a prior screening of the film for senior officials of the intelligence unit of Kolkata police by 12 February 2019. The letter stated that inputs were received “that the contents of the film may hurt public sentiments which may lead to political law and order issues”. The second petitioner responded on 12 February 2019, stating that these “inputs” had already been addressed by the CBFC before it issued a clearance for the release of the film. The second petitioner stated that the decisions of this Court hold that it is not open to any other authority or public office to interfere in such matters as this would violate the rule of law. The second petitioner categorically informed Shri Dilip Bandopadhyay, the Joint Commissioner of Police (Intelligence), Special Branch, Kolkata that his office does not have the jurisdiction to seek ‘advance’ private screening prior to the release for a “few senior officials” on a “priority basis” as sought. No further communication was received from the Kolkata police.

5 – 19 XXXXXXXXXXXX

20. *Commitment to free speech involves protecting speech that is palatable as well as speech that we do not want to hear. A declaration attributed to Voltaire: “I despise what you say but will defend to the death your right to say it” encapsulates*

the essence of the protection of free speech. Protection of the freedom of speech is founded on the belief that speech is worth defending even when certain individuals may not agree with or even despise what is being spoken. This principle is at the heart of democracy, a basic human right, and its protection is a mark of a civilized and tolerant society.” The reasons to defend free speech are both moral and instrumental. Moral arguments for the defense of free speech range from a conception of what it is to be a person, to the idea that curtailments of speech and expression are an infringement of an individual’s autonomy or dignity—either as a speaker or a listener, or both. These arguments are based on the intrinsic value of free speech for human beings rather than the measurable consequences that might flow from preserving it. The instrumental argument on the other hand is based on the notion that preserving free speech produces tangible benefits, whether in terms of increased personal happiness, a flourishing society, or even economic benefits.

21-26 XXXX XXXXX XXXXX

27. *A catena of decisions of this Court have emphasised the value of freedom of speech and expression in our democracy. In one of the first constitutional cases concerning the freedom of speech and expression, Romesh Thapar V. State of Madras, it was observed:*

“Thus, very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organizations, for, without free political discussion, no public education, so essential for the proper functioning of the processes of popular Government is possible.”

30. In S. Rangarajan v. P. Jagjivan Ram, a Division Bench of the Madras High Court had revoked the U-Certificate ("suitable for all ages") granted to a Tamil film Ore Oru Gramathile dealing with the issue of reservation.

30.1. Jagannatha Shetty, J. on behalf of a three-Judge Bench of this Court, emphasised upon the positive duty of the State to protect the freedom of speech and expression thus:

"51.We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression."

30.2 The Court also considered that the film had been already been approved by two Revising Committees:

"52. In this case, two Revising Committees have approved the film. The members thereof come from different walks of life with variegated experiences. They represent the cross-section of the community. They have judged the film in the light of the objectives of the Act and the guidelines provided for the purpose. We do not think that there is anything wrong or contrary to the Constitution in approving the film for public exhibition."

30.3. *The Court concluded that the freedom of speech and expression could be restricted only under the limited circumstances in Article 19(2):*

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

31-43 XXXX

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44. *The statutory authority to certify a film for public exhibition is vested in the CBFC under the provisions of the Cinematograph Act, 1952. Sections 4, 5, 5-A and 5-B provided a statutory code for the examination and certification of films for public exhibition. Sub-section (1) of Section 5-B provides for the grounds on which a film may not be certified for public exhibition. An order refusing to grant certification is subject to the remedies stipulated in the Act. The State Act [Section 6 of the West Bengal Cinemas (Regulation) Act, 1954].*

45. *The danger which this case exemplifies is the peril of subjecting the freedom of speech and expression of the citizen to actions which are not contemplated by the statute and lie beyond the lawful exercise of public power. All exercises of authority in pursuance of enabling statutory provisions are amenable to statutory remedies and are subject to judicial oversight under a regime of constitutional remedies. The exercise of statutory authority is not uncontrolled in a regime based on the rule of law*

But what do citizens who have a legitimate right to exhibit a film confront when they are told that a film which is duly certified and slated for release is unceremoniously pulled off the exhibiting theatres without the authority of law? Such attempts are insidious and pose a grave danger to personal liberty and to free speech and expression. They are insidious because they are not backed by the authority of law. They pose grave dangers to free speech because the citizen is left in the lurch without being informed of the causes or the basis of the action. Thus has the immediate effect of silencing speech and the expression of opinion.

46. Contemporary events reveal that there is a growing intolerance: intolerance which is unaccepting of the rights of others in society to freely espouse their views and to portray them in print, in the theatre or in the celluloid media. Organised groups and interests pose a serious danger to the existence of the right to free speech and expression. If the right of the playwright, artist, musician or actor were to be subjected to popular notions of what is or is not acceptable, the right itself and its guarantee under the Constitution would be rendered illusory. The true purpose of art, as manifest in its myriad forms, is to question and provoke. Art in an elemental sense reflects a human urge to question the assumptions on which societal values may be founded. In questioning prevailing social values and popular cultures, every art form seeks to espouse a vision. Underlying the vision of the artist is a desire to find a new meaning for existence. The artist, in an effort to do so, is entitled to the fullest liberty and freedom to critique and criticise. Satire and irony are willing allies of the quest to entertain while at the same time to lead to self-reflection. We find in the foibles of others an image of our own lives. Our experiences provide meaning to our existence. Art is as much for the mainstream as it is for the margins. The Constitution protects the ability of every individual citizen to believe as much as to communicate, to conceptualise as much as to share.

47 Public power must be conscious of the fact that ours is a democracy simply because the Constitution recognises the inalienable freedoms of every citizen. Power has been entrusted to the State by the people under a written Constitution. The State holds it in trust and its exercise is accountable to the people. The State does not entrust freedoms to the people: the freedoms which the Constitution recognises are inseparable from our existence as human beings. Freedom is the defining feature of human existence. Freedoms are not subject to power. Public power is assigned by the people to Government. Ours is a controlled Constitution, a Constitution which recognises the fullest element of liberty and freedom and of the answerability of power to freedom.

48. The views of the writer of a play, the metre of a poet or the sketches of a cartoonist may not be palatable to those who are criticised. Those who disagree have a simple expedient. They do not watch a film, do not turn the pages of the book or do not hear what is not music to their ears. The Constitution does not permit those in authority to crush the freedom of others to believe, think and express. The ability to communicate "ideas" is a legitimate area of human endeavour and is not controlled by the acceptability of the views to those to whom they are addressed. When the ability to portray art in any form is subject to extra-constitutional authority, there is a grave danger that fundamental human freedoms will be imperilled by a cloud of opacity and arbitrary State behaviour.

49. As this case indicates, a producer of a film which has been certified by the EBFC needs to embark upon meticulous arrangements including contracts for the exhibition of the film. The wielding of extra-constitutional authority is destructive of legitimate expectations. Under the constitutional scheme, restrictions can only be imposed by or under a law which is made by the State. The State of West Bengal has informed the Court that it had not taken recourse to its statutory powers either under State

or Union legislation. If that be so, there has to be some explanation forthcoming before the Court why the film was simultaneously removed from the theatres, at one stroke, shortly after release. The apprehension of the petitioners that this was an action which followed on the letter dated 11-2-2019 of the Joint Commissioner of Police is not unfounded. The letter addressed by INOX to the producer specifically mentions that they were directed by the authorities to discontinue the screening in the "interest of the guests". We have no manner of doubt that this was a clear abuse of public power. The police are entrusted with enforcing law. In the present case, the West Bengal police have overreached their statutory powers and have become instruments in a concerted attempt to silence speech, suborn views critical of prevailing cultures and threaten law-abiding citizens into submission

50. The freedoms which are guaranteed by Article 19 are universal. Article 15 stipulates that all citizens shall have the freedoms which it recognises. Political freedoms impose a restraining influence on the State by carving out an area in which the State shall not interfere. Hence, these freedoms are perceived to impose obligations of restraint on the State. But, apart from imposing "negative" restraints on the State these freedoms impose a positive mandate as well. In its capacity as a public authority enforcing the rule of law, the State must ensure that conditions in which these freedoms flourish are maintained. In the space reserved for the free exercise of speech and expression, the State cannot look askance when organised interests threaten the existence of freedom. The State is duty-bound to ensure the prevalence of conditions in which of those freedoms can be exercised. The instruments of the State must be utilised to effectuate the exercise of freedom. When organised interests threaten the properties of theatre owners or the viewing audience with reprisals, it is the plain duty of the State to ensure that

speech is not silenced by the fear of the mob. Unless we were to read a positive obligation on the State to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised, there is a real danger that art and literature would become victims of intolerance. In the present case, we are of the view that there has been an unconstitutional attempt to invade the fundamental rights of the producers, the actors and the audience. Worse still, by making an example out of them, there has been an attempt to silence criticism and critique. Others who embark upon a similar venture would be subject to the chilling effect of "similar misadventures". This cannot be countenanced in a free society. Freedom is not a supplicant to power."

Further reference is made to another judgment of the Hon'ble Supreme Court passed in the matter of **Adarsh Cooperative Housing Society Limited Vs. Union of India and others** reported as **(2018) 17 SCC 516**, which related to the release of Hindi Movie namely 'Aiyaary'. Reference is made to paragraph No.3 thereof, which reads thus:

"3. It is not in dispute that the film Aryaary has already been given the requisite certificate by the Central Board of Film Certification (for short "CBFC") under the Cinematograph Act, 1952 (for brevity "the Act") and the said Board has also taken the suggestions from the competent authorities of the Army as a measure of caution. There can be no shadow of doubt that the Censor Board can grant a certificate and in the said decision-making process, it can also consult the persons who can assist it to arrive at the condign conclusion. We do not intend to name the number of authorities which have been referred to in the pleadings."

He also drew reference to the interim order passed in the matter of **Viocom 18 Media Private Limited and others Vs. Union of India and other**

reported as (2018) 1 SCC 761, pertaining to the release of Hindi Movie 'Padamwati/Padmawat'. The relevant extract of the same is reproduced hereinafter below:

"15. For the present, we are considering the prayer for grant of interim relief i.e. whether the notifications/orders prohibiting the exhibition of the film should be stayed or not. The creative content is an insegregable aspect of Article 19(1) of the Constitution. Needless to emphasise, this right is not absolute. There can be regulatory measures. Regulatory measures are reflectible from the language employed under Section 5-B of the Act and the Guidelines issued by the Central Government. Once the parliamentary legislation confers the responsibility and the power on a statutory Board and the Board grants certification, non-exhibition of the film by the States would be contrary to the statutory provisions and infringe the fundamental right of the petitioners. That apart, as we understand at present from para 27 of the judgment in Prakark Jha Productions, it is the duty and obligation of the State to maintain law and order in the State. We may also note here with profit that the Guidelines are to be kept in mind by CBFC. For the sake of completeness, we reproduce the relevant part of the Guidelines:

"2. In pursuance of the above objectives, the Central Board of Film Certification shall ensure that –

** * * **

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

** * * **

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

** * * **

(xiii) visuals or words contemptuous of racial, religious or other groups are not presented;

* * * *

(xiv) *visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitude are not presented;*

* * * *

(xviii) *public order is not endangered;"*

Reliance is also placed on a Division Bench judgment of in the matter of **Sant Eshar Singh Vs. Union of India and others** reported as **(2002) 2 RCR (Civil) 406.** The relevant extract of the same is reproduced hereinafter below:

“1-5 XXXX XXXX XXXX

6. *Firstly, a word about the law and the problem that confronts the human society.*

The people of the world live on one earth. But they profess different religions. Thus, we have Buddhism, Christianity, Hinduism. Islam. Jainism, Judaism and Sikhism. All religions teach us benevolence, Charity, Compassion, Forgiveness, Return good for evil. Show mercy Above all, every religion teaches us to be tolerant.

Sikhism recognizes these principles. It is known that the Khalsa was raised "to defy religious intolerance, religious persecution and political inequality Those who grovelled in the dust rose proud, defiant and invincible in the form of Khalsa. They bore all sufferings and un-nameable tortures cheerfully and unflinchingly." It affirms - "Every person is precious to God. The langar is open to every one regardless of caste, creed, colour or sex Equality and service to society are the known tenets of Sikh religion.

Despite the abiding human faith in religious principles, we have a world that has crucified Christ, assassinated Abraham Lincoln,

killed Kennedy and murdered Mahatma Gandhi. This is so because the society has its share of the deviant and the devout. There is always a conflict between the two. But it has to be tolerated. This is the reason for the acceptance of religion. Everyone has the right to profess. Also the duty to tolerate. The need to synthesis right with duty has been historically recognised. The French Convention of 1793 records that "common happiness is the aim of society. The basic purpose of Jaw is to ensure the greatest happiness of the greatest number. In this context, W. Friedman in 'Legal Theory (5th Ed.) has said that

"The relation of the rights of the individual to those of his fellow individuals in the community has gradually led to a profound modification of the legal values of the modern democracy. It has increasingly tempered individual right by social duty Democratic communities have universally, though with varying speed and intensity, accepted the principle of social obligation as limiting individual right."

Thus, every right rests upon some degree of control. This position was recognised by our founding fathers while drafting the Constitution. It postulates a Secular Democratic Republic. It guarantees freedom. To profess, practice and propagate religion. It provides for the protection of interests of minorities. A person's right to profess a particular faith, practice ceremonies and rituals is recognised. At the same time, the Constitution also ensures the freedom of speech and expression to every citizen. It also provides for reasonable restrictions on the rights in public interest.

In the present era of reform and resistance, absolute freedom is impossible. So is the freedom to profess; practice and propagate religion. It must be remembered that we cannot carry our religious beliefs on the palm of the

hand. We cannot complain that every blow of the breeze bruises our religious susceptibilities. Tolerance being one of the basic tenets of every religion, we have to share and accept the diversities of opinion.

The Constitution also embodies "Fundamental Duties in Part IV-A. It postulates that it shall be the duty of every citizen to "promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities."

Thus, the duties and rights have to be read together. The preacher of a faith and the producer of the film have to respect each other's sensitivities. The diversities have to be accepted. The society has to recognise that the artist has the right to articulate. The painter can have his own perception. A filmmaker is entitled to his freedom. In the same measure as the religious man is entitled to his religiously

This is not to say that the religious sentiments of every section of the society have not to be respected. In fact, the human sensitivity and psyche have always to be kept in view. And we must not see a devilish design in every deed. Only then we can achieve the ultimate goal of a Secular and cohesive community.

7-9 XXXX XXXX XXXX

10. *The resolution of the Committee is at Annexure P9. It says "In the film the facts have been exaggerated and distorted regarding the partition of the country in 1947. The scenes have been shown in this film, which hurt the mind of the Sikh very seriously and there is resentment among the Sikh Sangat. This body in its meeting feel that all this is the result of deep-rooted conspiracy." The resolution does not even suggest defamation or any infringement of the fundamental rights.*

The documents and the resolution do not prove defamation or an effort at interfering with the freedom of religion of the Sikhs or their rights as a minority,

Do the scenes go beyond the limits of reasonable exercise of the right of freedom of expression? Is there an attempt to hurt the religious sentiment? There is nothing on record to prove the petitioner's complaint. In any case, these were matters to be considered under Section 5(b) of the Cinematograph Act, 1952, by the Censor Board. The film has been certified as suitable for unrestricted public exhibition. In the absence of evidence, we find no illegality.

Still further, nothing has been pointed out to show that the film goes against the Sovereignty and integrity of India. Nor has it been suggested that it affects the security of the State or its friendly relations with any foreign country. It has not been suggested that it affects public order, decency or morality. It is not the petitioner's case that it involves "contempt of court. In any case, the producer has shown certain characters in a particular light. According to his own perception. The Censor Board has considered the matter. There is nothing that may warrant the intervention of this court.

11-15. XXXX XXXX XXXX

16. *In view of the above, we hold that*

1. India is an instance of unity in diversity. We have an acute diversity of caste, creed, faith and religion of custom and usage of language. The dialect changes every few miles. A filmmaker has a tough job. He has to cater to the needs of all sections of the society. In such cases, a narrow and pedantic approach cannot be adopted.

2. The Constitution postulates in the Preamble that India shall be a Secular Republic. The rights as embodied in Articles 19, 25, 26 and 29 have to be harmonised to ensure

that we achieve the goal of cohesive community. The duty to transcend religious diversities is fundamental and has to be kept in view.

3. The right of the artist to articulate of the painter to paint according to his own perception or of the film producer to project an event on the screen as he sees it is also recognised under the Constitution To the same extent and in the same measure as that of a fundamentalist to his faith. While ensuring freedom of faith, we cannot kill creativity.

4. We cannot carry religion on the palm of our hand. We cannot complain that every blow of the breeze bruises our religious susceptibilities.

5. In the present case, we are satisfied that "Gadar gives no ground to the petitioner to grumble. He has no cause for complaint. Thus, we find no merit in the petition. It is, consequently, dismissed in limine."

By placing reliance upon the above, it is strenuously argued that the creative expression by an artist/writer or a movie/film producer cannot be left to the whims of an individual who claims that his sentimentalities or emotions are being adversely affected. Non-acceptance of views/expressions or portrayal by another person cannot be the basis for denying exhibition of the movie. Being a work of fiction, the artist intends to depict events, expressions, circumstances and happiness based upon creative portrayal by an artist. There can be no restriction on such an act of artist as it would be an attack on the fundamental rights guaranteed under Article 19(1-A) of the Constitution of India. It is also argued that the Central Board of Film Certification had duly taken into consideration all the guidelines that have been prescribed under Section 5-B of the Cinematograph Act, 1952 and the Rules framed thereunder

and also the guidelines for exhibition of films for public exhibition. Nothing insidious was found by the Central Board of Film Certification and whatever amendments/rectification/corrections as are required to be done have been undertaken prior to the grant of Certification by the Central Board of Film Certification. Any set of people or set of group cannot thereafter be permitted to dictate his displeasure and to claim that any such work of art ought not to be exhibited. The same would amount to creation of an authority beyond the rule of law who could dictate its terms and claim for prior approval for release/exhibition of any movie.

I have heard learned counsel for the respective parties have gone through the pleadings and the arguments raised by the respective parties.

Before proceeding further in the matter, it is necessary to understand the history of Nihangs and as to whether they are part of Sikh religion.

“Nihang” a Persian word meaning a “Crocodile”, given to the Akalis by the invading “Mughals”. They are a part of the Sikh Military order. They are renowned for their martial skills with a vocation of being a warrior. A Nihang has to live by a regime of Rehat (disciplined way of life), Naam Abhyaas, Knowledge and Jeevan (spiritual life). The Nihangs differ essentially from all other Sikh orders in being a militaristic organization. However, they are followers of Sikhism and Gurmat but are not a religion unto themselves. The attire given to them is traditional but it is not a part of religion. The symbols worn by them depict their rank and group but does not become a part of religion. An ardent follower of faith through its rituals and practices cannot partake religion itself which lives beyond the followers.

The question which next arises is to whether any belief of resemblance by a follower about the villain having similarities to their leader can be a valid basis for cancelling a film certification or prohibiting release thereof. At the outset, the film is not based on life of their leader and is not a biographic account. It claims to be inspired by a true event. It is not an adaptation of a true event or a dramatic representation of an event. An inspiration from an event is essentially a work of fiction woven around any aspect of an event. To illustrate, “Mahabharat” is an event which has been represented in varied forms by playwrights. There has been account from the perspective of ‘Karna’; from the perspective of ‘Draupadi’; from the perspective of ‘Arjun’; from the perspective of ‘Duryodhan’; as well as various others including “Shakuni”, “Gandhari” Karna’s wife as well as ‘Kuru Women’. Hence, any event may have diverse perspective and narrative. Such narrative is not an account of the event but a perspective from the point of view of the protagonist or the writer. Hence, it cannot be said that an event portrays a character or person in a shade other than the belief of an objector and that any such portrayal needs to be changed. The dimensions of Article 19(1)(a) of the Constitution of India is subject to the restriction prescribed in Article 19(2) of the Constitution of India and it does not confer any superior right of freedom to speech and expression on one person over the other. It cannot be interpreted to mean that every other person must express in the way of liking of the objector. That would rather truncate the spirit of Article 19(1)(a) of the Constitution of India and subjugate the right to the whims and caprices of anyone and everyone. Moral arguments for restriction on freedom of speech could be infringement of autonomy or dignity of the other. Rule of law cannot be

negated or be made to surrender under intimidation. The understanding of the Right cannot be left to an abstract understanding by an uncontrolled regime devoid of reason and objectivity, thus silencing speech and expression. Such intolerant groups pose danger to the constitutional right allowing everyone to espouse their views.

Art and Artist have challenged contemporary wisdom and belief. Every such question, satire or criticism cannot be silenced by force or intimidation for questioning belief and perceptions. Public palatability is not the pre-requisite for the freedom if it is otherwise construed under Article 19(2) of Constitution of India.

Thus, the petitioner cannot pray for prohibition of a movie from exhibition as it is not palatable to him or tends to portray his sectoral head in a manner he does not like, assuming even if that it does. The character may be inspired in some ways but the same is not portrayal of the person, as alleged. Even otherwise, the petitioner has not seen the movie and has challenged only the basis promotional trailer which is of 2-4 minute in length as against the feature film of 2½ hours. Tolerance, acceptance and mutuality of existence are essence of Sikhism. Rigidity and intolerance have no scope in a religion which commenced by challenging rigidity and dogmatic practices and questioning the relic worship. Religion and belief are often beyond objectivity and are largely not influenced by anyone else's non-belief. Any such fear is disbelief in the foundation of religion itself which he claims to profess.

A specific disclaimer is also made at the very beginning for it to be a work of fiction. Thus, any similarity to any person living or dead is purely an act of co-incidence.

It is further well set out by the Hon'ble Supreme Court in the matter of Indibily Creative Private Limited (Supra) that the statutory authority to certify a film for exhibition has been constituted under the provisions of Cinematograph Act, 1952. There is an entire code which deals with the viewing/screening and assessment of every movie before release thereof in the Cinema Hall for public exhibitions. Guidelines have been duly framed under the Act that are to be followed by the Central Board of Film Certification before issuance of any such Certification including the aspects of public morality, public order, decency and whether it is likely to incite commission of any offence. The aforesaid parameters were also incorporated as a part of the statutory guidelines notified by the Government in exercise of the powers conferred by Sub-Section 2 of Section 5 (E) of the Cinematograph Act, 1952. Hence, any apprehension expressed by the petitioner cannot weigh more than the satisfaction already accorded by the Central Board of Film Certification. The statutory authority being custodian for ensuring the compliance of the guidelines so framed by the legislature is expected to have followed the same to the hilt. There can no presumption of failure of duty by Central Board of Film Certification. It was always open to any particular person to raise objections before the Central Board of Film Certification. It is not disputed that no such objections were ever filed by the petitioner before the Central Board of Film Certification. So much so, even the certificate issued by the Central Board of Film Certification on 02.07.2021 is not a subject matter of challenge despite lapse of more than one year since the issuance of the said certificate. Any citizen would not have a legitimate right to confront exhibition of a film duly certified by the statutory authority and to claim that the same should be

pulled off from screening or exhibition in theatres. Such tendency cannot be accepted or allowed to escalate as it curtails rights of every other person in society to espouse his views and to portray them. Any such restriction on right of the playwright, artist, musician or actor, if are to be subjected to popular notion of what is acceptable and what is not, would be a step towards rendering the rights guaranteed under the Constitution as illusory. The purpose of art and its ability of portrayal in myriad forms shall be gravely defeated. Merely because the Constitution recognizes inalienable freedoms to every citizen, it would not by itself empower every citizen to become a law unto himself and to impose his authority over and above statutory authorities conferred with overseeing implementation of such law and protection of such rights. Once an adequate mechanism and guidelines have been prescribed under the Cinematograph Act, 1952 for public exhibition of movies, there cannot be any other check and balances. Those who disagree or have reservations of their own against such work of art are under no compulsion to watch/view the same. The ability to communicate ideas cannot be controlled by the acceptability of view to those whom they are addressed.

The petitioner has failed to refer to any undisputed religious scripture that would demonstrate that Nihang Sikhs are a part of Sikhism as a religion or that Nihang Jathedar is a religious head. At best, he is a practising warrior Sikh. The uniform of Nihang Jathebandi is not equivalent to the five *Kankaars* which are integral part of Sikh religion.

Any such attempt on the part of the petitioner to equate the insignia worn by the Sikh Jathedar/Nihang Jathebandis to be a part of Sikh religion would rather be an abrasion of Sikh religion and is thus unacceptable.

The persons/people professing a religion or going by the rules of a religion do not become religion unto themselves. Religion far exceeds the people who profess it or follow the same. Resultantly, the attempt made by the petitioner to equate a Jathebandi or any community of Nihangs as an integral part of Sikh religion is thus a deliberate attempt to blur the line of religion and the followers thereof. No such attempt can be accepted for the purposes of crushing the freedoms guaranteed under the Constitution of India to the people in general.

It is also undisputed that there is an efficacious remedy under the Cinematograph Act, 1952. The same has not been availed. The petitioner has filed the present petition at a last moment and soon before its release despite the certificate having been issued for more than a year.

Besides, as claimed, an advisor from Sikh body had been associated by the Central Board of Film Certification and he did not find it objectionable. There is no provision for any other review. There is thus no basis for this Court to come to a conclusion that the certificate issued by the Central Board of Film Certification for release was bad.

The judgment relied upon by the petitioner is not applicable to the facts of the present case. The movie is not based on life of the Head Ajit Singh Poohla and it does not even make any such claim.

Further, merely because it claims on its tagline that 'it is not a murder but a correction', does not by itself challenge public order, decency or public morality. There are innumerable such instances where such themes have inspired movies. It would be arbitrary to not allow the respondent to exhibit his movie on this score.

I do not find any legitimate claim to have been established by the petitioner for seeking stay on exhibition of the movie. The present petition is, thus, dismissed at this stage.

09.11.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No