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W.P.No.14629 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2023

Coram

**THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN**

**W.P.No.14629 of 2023
and W.M.P.No.14113 of 2023**

BR Aravindakshan

.. Petitioner

Vs.

- 1.Union of India
Through it's Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi – 110 001.
- 2.The Chairperson,
The Central Board of Film Certification,
Films Division Complex,
Phase I Building, 9th Floor,
Dr.G.Deshmug Marg, Mumbai – 400 026.
- 3.The Secretary,
Ministry of Information & Broadcasting,
Room No.655-A, Shashtri Bhavan,
New Delhi – 110 001.



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4. The Secretary,
Home Department,
Secretariat, Fort St. George,
Chennai – 600 009.

5. Vipul Amrutlal Shah
Bharat Ark, Off Veera Desai Road,
Mhada Colony, Azar Nagar,
Andheri West, Mumbai, Maharashtra – 400 053.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to consider the petitioner'S representation dated on 05.11.2022, 06.11.2022 and 27.04.2023 given by the petitioner and completely band the film “The Kerala Story” in cinema halls and all other platforms.

For Petitioner : Mr.R.Abubucker

For Respondents : Mr.V.Chandrasekaran
Senior Panel Counsel for R1 to R3

Mr.J.Ravindran
Additional Advocate General
assisted by
Mr.A.Selvendran
Special Government Pleader for R4

Mr.Sathish Parasaran
Senior Panel Counsel for
M/s.Nithyaesh Natraj for R5



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ORDER

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[Made by **A.D.JAGADISH CHANDIRA, J & C.S.SARAVANAN, J**]

The petitioner who claims himself to be a journalist and a public spirit person has filed this writ petition with a prayer to consider his representations dated 05.11.2022, 06.11.2022 & 27.04.2023 and to completely ban the film “ The Kerala Story” in Cinema Halls and other platforms.

2. The grievance of the petitioner is that the subject movie is likely to be released on 05.05.2023 in four languages namely Tamil, Telugu, Hindi and Malayalam and the story line of the film is based on false information without any supporting documents. It is his further grievance that the release of the movie is likely to promote enmity between two different groups on the ground of religion which would be prejudicial to the maintenance of harmony and also against the security of the State and Public Order.

3. Mr.R.Abubucker, the learned counsel for the petitioner submitted that despite several representations, no action was taken by the competent authority to



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ban the proposed release of the subject movie. Instead, the Central Board of Film Certification has issued a certification dated 24.04.2023 under the category 'A'. It is further submitted that the Director and the Actor of the movie have given press statements which are provocative in nature and are likely to cause disharmony to the society and divide the society on communal lines. It is submitted that the film has been certified contrary to Section 5B of the Cinematograph Act, 1952.

4. Mr.V.Chandrasekaran, the learned counsel for the respondents 1 to 3 submitted that after due consideration, the second respondent / Central Board of Film Certification has certified that the subject film was fit for theatrical release under the category 'A' – Adults only. He further submitted that the prayer sought for by the petitioner should not be entertained by this Court. He therefore submitted that the Writ Petition should be dismissed.

5. Mr.J.Ravindran, learned Additional Advocate General appearing for the fourth respondent submitted that a similar case was filed before the High Court of Kerala in the case of *Adv.Anoop V.R. Vs. Union of India and others* in *W.P.(C) No.15036 of 2023* on 02.05.2023 and the High Court of Kerala declined to grant



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any interim relief against the grant of certificate for release of the subject film and had listed the case for further orders on 05.05.2023. He further submitted that the Court also had directed the DSGI to file an affidavit / statement on behalf of respondent 1 to 3 therein. He further submitted that since the Court had declined to grant any interim relief, a Writ Petition (Civil) in Diary No(s). 18735/2023 was also filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed the said writ petition today (i.e. 04.05.2023) with liberty to the petitioner therein to move the Kerala High Court.

6. Mr.Satish Parasaran, learned Senior Counsel appearing for the fifth respondent submitted that once the film certification has been granted by the competent authority, it cannot be challenged under Article 226 of the Constitution of India. In this connection the learned counsel for the fifth respondent has relied on the following cases:

1. *Union of India vs. K.M.Shankarappa* ; (2001) 1 SCC 582
2. *M/s.Prakash Jha Productions & Another vs. Union of India and Others* (Film “Aarakshan”); (2011) 8 SCC 372
3. *Harinder Singh Sikka Vs. Union of Inda & Others* (Film “Nanak Shah



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Fakir”); Writ Petition(s) (Civil) No(s).313/2018

4. *Priya Singh Paul vs. Madhur Bhandarkar & Ors. (Film “Indu Sarkar”);*

(2018) 13 SCC 438

5. *Salman Khan vs. The State of Gujarat & Others (Film “Loveyatri”); 2018 SCC Online SC 3758*

6. *Adarsh Co-operative Housing Society Ltd. vs. Union of India and Others (Film “Aiyaary”); 2018 SCC Online SC 227*

7. *Viacom18 Media Private Limited & Others vs. Union of India & Others (Film: “Padmaavat”); (2018) 1 SCC 761*

Nachketa Walkhekar vs. Central Board of Film Certification (Film “An Insignificant Man”); (2018) 1 SCC 778

7. We have considered the arguments advanced by the learned counsel for the parties.

8. The Writ Petition has been filed only on 03.05.2023 after the subject movie “The Kerala Story” was certified by the second respondent on 24.04.2023. The procedure contemplated under the Cinematograph Act, 1952 is elaborate. The second respondent Central Board of Film Certification (CBFC) is an expert body in the field of film certification and is competent to take a call as to whether the



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film can be released or not and accordingly certifies the same.

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9. We are of the view that the decision of the statutory body can be interfered under Article 226 of the Constitution of India only if there is a procedural infraction. Under Article 226 of the Constitution of India, the Court is not really concerned with the decision. It is only concerned with the decision making process. In this case we do not find any procedural irregularity or infraction of the Rules by the second respondent acting under the Cinematograph Act, 1952 while granting the certificate. If certification is refused, a remedy has been provided to an aggrieved party under Section 5C of the Cinematograph Act, 1952. Remedy under Section 5C of the Cinematograph Act apparently is not available to the petitioner.

10. However the petitioner has a remedy under Section 6 of the Cinematograph Act, 1952 read with Rule 32 of the Cinematograph (Certification) Rules, 1983 to approach the Central Government. Section 6 of the Cinematograph Act, 1952 and Rule 32 of the Cinematograph (Certification) Rules, 1982 are extracted hereunder:



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“6. Revisional powers of the Central Government.-(1) Notwithstanding anything contained in this Part, the Central Government [may, of its own motion, at any stage,] call for the record of any proceeding in relation to any film which is pending before, or has been decided by, the Board, [or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal)] and after such inquiry, into the matter as it considers necessary, make such order in relation thereto as it thinks fit, and the Board shall dispose of the matter in conformity with such order:

Provided that no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted, as the case may be, except after giving him an opportunity for representing his views in the matter:

[Provided further that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against public interest to disclose.]

(2) Without prejudice to the powers conferred on it under sub-section (1), the Central Government may, by notification in the Official Gazette, direct that-

(a) a film which has been granted a certificate shall be deemed to be an uncertified film in the whole or any part of India, or

(b) a film which has been granted a "U" certificate [or a "UA" certificate or a "S" certificate] shall be deemed to be a film in respect of which an "A" certificate has been granted; or

(c) the exhibition of any film be suspended for such period as may be specified in the direction:

Provided that no direction issued under clause (c) shall remain in force for more than two months from the date of the notification.

(3) No action shall be taken under clause (a) or clause (b) of sub-section (2) except after giving an opportunity to the person concerned for representing his views in the matter.

4) During the period in which a film remains suspended under clause (c) of sub-section (2), the film shall be deemed to be an uncertified film.]



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

11. Therefore, there is no merits in the present Writ Petition.

12. That apart, the Hon'ble Supreme Court in ***Union of India v. KM Shankarappa*** reported in ***(2001) 1 SCC 582*** the Hon'ble Supreme Court has held as under:

The court stated that the government cannot intervene in the decision made by the expert body (quasi-judicial body) constituted to decide on the film. When a body has been established for a particular purpose then another organ shall not interfere into its working. Held-dismissed



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13. In ***Viacom 18 Media Private Limited and others Vs. Union of India*** reported in (2018) 1 SCC 761 it was held as under:

"16. It has to be borne in mind, expression of an idea by any one through the medium of cinema which is a public medium has its own status under the Constitution and the statute. There is a Censor Board under the Act which allows grant of certificate for screening of the movies. As we scan the language of the Act and the Guidelines framed thereunder, it prohibits use and presentation of visuals or words contemptuous of racial, religious or other groups. Be that as it may. As advised at present, once the certificate has been issued, there is prima facie a presumption that the authority concerned has taken into account all the Guidelines including public order.

...

*18. In this regard we may reproduce a passage from an order of this Court in ***Nachiketa Walhekar v. Central Board of Film Certification***³ passed on 16-11-2017: (SCC p.779, para 5)*

"5. Be it noted, a film or a drama or a novel or a book is a creation of art. An artist has his own freedom to express himself in a manner which is not prohibited in law and such prohibitions are not read by implication to crucify the rights of the expressive mind. The human history records that there are many authors who express their thoughts according to the choice of their words, phrases, expressions and also create characters who may look absolutely different than an ordinary man would conceive of. A thought-provoking film should never mean that it has to be didactic or in any way puritanical. It can be expressive and provoking the conscious or the sub-conscious thoughts of the viewer. If there has to be any limitation, that has to be as per the prescription in law."

14. We therefore find no merits in this writ petition. It is liable to be dismissed. Accordingly it is dismissed. It is left open to the petitioner to workout his remedy in accordance of the provisions of the Cinematograph Act, 1952 as



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provided under law. No costs. Consequently, connected miscellaneous petition is closed.

[A.D.C., J]

[C.S.N., J]

04.05.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
bkn/ssr

To

- 1.The Home Secretary,
Union of India,
Ministry of Home Affairs,
North Block, New Delhi – 110 001.
- 2.The Chairperson,
The Central Board of Film Certification,
Films Division Complex,
Phase I Building, 9th Floor,
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A.D.JAGADISH CHANDIRA, J
and



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