

'Throws Integrity Of Art To The Wolves': Orissa High Court Quashes List Of State Film Awardees Over Plagiarism & Uncredited Remakes

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IN THE HIGH COURT OF ORISSA AT CUTTACK

DR. JUSTICE S.K. PANIGRAHI; J.

W.P.(C) No.38227 of 2021; 11.01.2023

Bobby Islam* versus *State of Odisha and Ors.

For Petitioner : Ms. B.S. Sahoo, Adv.

For Opp. Parties : Mr. S.N. Das, ASC

J U D G M E N T

1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. In this Writ Petition, the petitioner has challenged the final selection list of 31st Odisha State Film Awards, 2019; published in the respective website by the Secretary, Odia Language Literature and Culture Department, Government of Odisha, Bhubaneswar ("Opposite Party No.1") and Director, Odia Language Literature and Culture Department, Government of Odisha, Bhubaneswar ("Opposite Party No. 2") pursuant to the decision of the Jury Committee constituted by the Opposite Party No.2 on the ground that the same is illegal and in violation of the provisions of Odisha State Awards for Films Rules, 2010.

I. FACTUAL MATRIX OF THE CASE:

4. The brief storyline of the case is that in the year 1973, the Government of Odisha decided to give awards on various categories of Odia Films for supporting and promoting the production of high quality Odia Films. Accordingly, Odisha State Film Awards Rules, 1973 was framed by the Opposite Party No.1 and awards in various categories were announced. Thenceforth, Odisha State Films Awards have been consistently announced and accorded to the luminaries of Odia Films in various categories.

5. An advertisement/notice was floated on the website of the Department of Odia Culture inviting applications for 31st Odisha State Film Awards, 2019 against 27 categories and 8th Odisha State Tele Awards, 2019 against 20 categories by 20.02.2021. The relevant terms and conditions for entry of the aforesaid awards are mentioned hereunder:

"i. Clause-1- The Films and telefilms are required to be made between 01.01.2019 to 31.12.2019. The tele-series must be broad casted between 01.01.2019 to 31.12.2019 and telecast certificate must be attached with the application.

ii. Clause-2- The original films/serials/telefilms made in only Odia Language or Odia Tribal language be nominated for awards.

iii. Clause-6- All matter regarding award will be followed by Odisha State Film Awards Rules-2010 and Odisha State Tele Awards Rules-2013."

6. The petitioner is a reputed film Director and doing films basing upon original story, tradition and culture. Pursuant to the aforesaid advertisement, on 17.01.2021, the petitioner had submitted his application for consideration in Odisha State Film Awards-2019 for his feature film "CHHABIRANI", released on 19.09.2019, for 25 categories.

"CHHABIRANI" is based on a true story which occurred in 1980. The petitioner expected his film to be selected in some categories of the 31st Odisha State Film Award-2019 as his film satisfied all the required formalities.

7. However, on 05.11.2021, when the final selection list of 31st Odisha State Film Award-2019 was declared based on the recommendation of a Jury Committee was constituted by the Government of Odisha consisting of a Chairman (O.P. No.3) and other 5 members (O.P. No. 4 to 8) for scrutinizing the films for 31st Odisha State Film Award, 2019. The petitioner was shocked to find that his film was not found mention in any of the categories.

8. After verifying the award list given in 27 categories, the petitioner allegedly found various irregularities in the awards announced in 27 categories which are in blatant violation of Odisha State Film Award Rules, 2010. He alleged that many of the films that featured in the final award list are remakes of some films made in other languages which should not have qualified the cut for the awards in the first place.

9. Thereafter, the petitioner gave a representation through email to various authorities including Hon'ble Chief Minister, Odisha, Minister of Tourism and Culture, Director of Odia Language, Literature and Culture Department on 10.11.2021. Finally, the petitioner constrained to approach this Court registering his grievance.

II. PETITIONER'S SUBMISSIONS:

10. Learned counsel for the Petitioner has earnestly submitted that the impugned award list published by the Opposite Parties is fraught with irregularities which are blatantly unlawful and arbitrary for it is contrary to the concerned rules and guidelines which guide the selection of the awards.

11. It was submitted that the Clause-2 of the terms and conditions mentioned in the aforesaid advertisement clearly envisages that the original films/ serials/ telefilms made only in Odia Language or Odia Tribal language will be considered for awards. Also, Clause-3(b) of the Odisha State Film Award Rules, 2010 stipulates that the dubbed/ revised/ copied/ remake version of films are ineligible for entry. In the impugned selection, film "KHUSI" of Taranga Cine Production, which has been selected for awards in 5 categories, is a remake of a Korean film "HOPE" and the film "GOLMAL LOVE" is also plagiarized from a Punjabi film "CARRY ON JATTA".

12. It was also submitted that Clause-12 (b) of the Odisha State Award for Films Rules, 2010 prescribes the procedure for selection. Sub-Clause-(iii) stipulates that any person directly or indirectly associated with film entered in the festival shall not be eligible to serve as a Jury. In the instant case, Adikanda Rout ("Opposite Party No.7"), the Editor of film magazine "Chalachchitra Jagata" acted as a Jury Member in the selection Committee which is contrary to the Rules. The film magazine featured the advertisement(s) of the films that find place in the award list. His position as a jury member can be influential in the impugned films winning the awards in the concerned list. This setup reeks of bias and violation of principles of natural justice.

13. "Nimki" is a full length feature film released in the theatres. Surprisingly, it finds place in the final selection list of 8th Odisha State Tele Awards, 2019 in category of best script which is not only contrary to the Odisha State Film Award Rules as well as Odisha State Tele Awards Rules, 2013 which reeks of irregularity and malafide.

14. It was alleged that the awards given to films "KHUSI" and "GOLMAL LOVE" of Tarang Cine production is also violation of provisions of Copyright Act as the same are heavily plagiarized.

15. It was vehemently submitted that many cine critics and luminaries of the odia cine industry have raised serious objection on the above malafide action of the State authorities/Opposite Party Nos.1 and 2. Despite the same, no action was taken which is symptomatic of illegal and arbitrary attitude of the opposite parties, based on malafide and undue favouritism giving go by to all the provisions of law.

16. The petitioner, therefore, seeks quashing of the final selection list of 31st Odisha State Film Award, 2019 as the same is violation of the provisions of the advertisement and Rules governing the field.

III. OPPOSITE PARTIES' SUBMISSIONS:

17. *Per contra*, learned counsel for the Opp. party submitted that the writ petition is thoroughly misconceived and the same is not maintainable in the eye of law and therefore the same is liable to be dismissed.

18. It was submitted that the film "Chabirani" was viewed by the jury comprising the following as Members:

- i. Sri Surendra Sahu, Cinematographer as Chairman
- ii. Sri Goura Pattnaik, Lyricist as Member
- iii. Sri Jitendra Mishra, Producer as Member
- iv. Sri Pranab Pattnaik, eminent singer as Member
- v. Smt. Tripura Mishra, Actress as Member
- vi. Sri Adikanda Rout, Cine Journalist as Member

19. It is further submitted that the jury have been duly appointed by the Government and their work has not been interfered with by any quarters whatsoever. Level playing field has been given to all the applicants including the general public to apply in the categories in which they feel their performance can fetch an award. It has been the prerogative of the jury all throughout and their decision has been respected since the members of the jury are people of eminence who are well known in the world of Odia films. Thus, the challenge to their wisdom and judgment is fraught with illogical reasoning and therefore the contention the petitioner is contested strongly.

20. On the non-selection of the petitioner's film "CHHABIRANI", it was submitted that the content of the petitioner's film is stated to have contained sexually explicit acts and other disturbing scenes which could have created a furor, if granted the award. It could have spoilt the social harmony of the society as the on-reel perpetrators of the story of the film belonged to a particular caste/community.

21. It was argued that the kind of violence, rape, murder and political mafiaism shown in the film are in no way part of Odia tradition and culture. It was also alleged that the second half of the film was a blatant copy of a superhit Hindi movie of the 90's, namely "ANDHA KANOON". The grisly rape and murder was shown in a manner, is unfit for family viewing.

22. Next, it was submitted that no rules have been violated in the selection of the awardees and the rules framed by the Government vide Resolution No.2956/TC dated

28.3.2011. Thus, the contention of the petitioner is strongly denied as he has not stated the specifics of his contentions.

23. It was also submitted that the jury didn't know about the allegations of the petitioner against the film "KHUSI" and "GOLMAL LOVE". In the course of the re-evaluation, ordered by this Court, the jury took note of the fact that the nominations were supported by affidavits that the films were original. On the other hand, the petitioner did not submit any material to substantiate his claims.

24. It was further submitted that the jury have been satisfied with the content of the presentation and were not influenced by extraneous considerations. Thus, to level the allegation of plagiarism is in poor taste and is without any basis. The Applicants for entry of Films 'KHUSI' and 'GOLMAL LOVE' to Odisha State Film Awards, 2019 had clearly mentioned in the entry forms that these two films are not dubbed version or an adaptation or remake of film made in another language.

25. Moreover, it was argued that no award has been given to the impugned films in the categories of story, screenplay or direction where plagiarized content could've raised questions of integrity. Individual artists of both the films in five other categories have been adjudged superior to others in their respective fields and cannot be denied of their merits. The Jury committee sincerely felt that no other artist could have been considered better than the selected one in each category.

26. It was submitted that the Members of the jury have been appointed vide Notification No.5569, dated 08.09.2021 of the Odia Language, Literature and Culture Department, Govt. of Odisha pursuant to the Rule 12 (i) and (ii) of the Odisha State Awards for Films Rules, 2010. Hence, it is strongly argued that the allegations levelled by the petitioner are not correct and hence, it is strongly denied.

IV. REASONING OF THE COURT:

27. Having heard the learned Advocates appearing for both the sides and having gone through the material on record, it appears that before dealing with the issue of alleged irregularities in the cine award list raised in the petition, relevant provisions of law is required to be taken into consideration:-

28. The Orissa State Awards for the Films Rules, 2010 vide Rule 3(b) renders the following films illegible for consideration for the concerned awards:

"3. The following films shall be ineligible for entry:

(a) Remake of a film that has already won a State Award in a particular category

(b) Dubbed/revised/copied/remake version of a film.

(c) Films that relates to threat to national integrity, sovereignty and religious harmony as per certification of Central Board of Film Certification.

(d) Performance of an artist where his/her voice and dialogue are dubbed by some other artiste for awards from S. 3, 4, 5, 14, 15, 16, and 17 of the schedule-1."

29. In such view of the matter, the grievance of the petitioner regarding the violation of Rule 3(b) has been considered by this Court. The impugned films are kept in the nomination list of 31st Odisha State Film Award, 2019 for the category of Best Actor – Saroj Parida and Best Actress- Kabya Kiran for the movie "KHUSI".

30. I have personally watched both the films for better understanding of the allegations. After ocular verification of the films, it appears that the two films, i.e.,

“KHUSI” & “GOLMAL LOVE” are heavily inspired from the alleged non odia films at least. Considering a comparison of the impugned films with the plot and scenes in the Korean film ‘HOPE’ and Punjabi film “CARRY ON JATTA”, it is clear that from the plethora of facts, circumstances and stated overlap that the impugned motion films are uncredited remakes of the aforementioned non-Odia films. These films have been manipulated slightly in order evade the scanner of an uncanny resemblance. Otherwise, the films are scene-by-scene copies of the impugned non-Odia films. The content of the impugned films cannot be called ‘original’ in respect to Orissa Film Award Rules from any angle of judgement.

31. A quick look at the Procedure for Selection as envisaged in the Odisha State Awards for Films Rules, 2019 as extracted hereunder:

“Procedure for Selection:

(i) The awards shall be decided by a Jury to be constituted by the State Government for each year.

(ii) The Jury shall be composed of a Chairman and not more than 6 members distinguished in the field of Cinema, performing and other allied arts and humanities.

(iii) Any person directly or indirectly associated with film entered in the festival shall not be eligible to serve on the Jury.

(iv) The Jury will determine their own work procedure.

(v) The Chairman of the Jury may seek advice of the experts in specialized areas whenever necessary.

(vi) The quorum for the meeting of the Jury shall be 50 per cent of the members of the Jury and the Chairman.

(vii) In case of difference of opinion, the opinion of the Majority of the members of the Jury including the Chairman shall be deemed to be the recommendation of the Jury. In the event of equality of votes, the Chairman shall have a casting vote.

(viii) The Jury shall have the discretion to recommend that any one or more awards may not be given for a particular year if they are of the opinion that entries for that or these awards are not of the required standard.

(ix) The Jury constituted under this Rules may also make recommendation for the Jayadev Award and provision of this Rules shall mutates mutandis apply to the recommendation of the Jury.”

32. Learned counsel for the petitioner has submitted that as per Clause-12(3) of the said Rules any person directly or indirectly associated with film entered in the festival shall not be eligible to serve on the jury against an apprehension of bias. In the present case, the allegation is made against Adikand Rout, a Cine Journalist whose magazine features advertisements of some movies which found mention in the award list. In fact, the editor of the said magazine is part of Jury is not fatal insofar as the allegation of advertisement of film posters inside the magazine. In such view of the matter, the grievance of the petitioner is misplaced. There is no reasonable ground for this Court to believe that the Adikand Rout was likely to be biased. A magazine may feature a lot of advertisements, related or related, to the cinema industry. Just because a magazine features advertisements of some movies that go on to win awards doesn't mean the personnel behind the magazine would promote the films in their official capacity. It is difficult to prove the state of mind of a person. Therefore, what this Court

has to see is whether there is reasonable ground for believing that this gives rise to a biased view.

33. This Court agrees with the learned counsel for the Opp. Parties that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. Moreover, the petitioner has not submitted any line of reasoning behind his contention which does not help his case either.

34. The allegations of copyright are not central to the main issue of contention in this case and *ergo*, I have not found it necessary to venture into this allegation.

V. CONCLUSION:

35. As such, the impugned award list is fraught with blatant irregularities which strike at the heart of state directives of law. The Opposite Parties have been negligent in letting these irregularities be scot-free. The manner in which the impugned films were considered and declared the winners of the prestigious Odia State Cine Awards is a matter of great embarrassment and concern for the Odia cinema and artiste community.

36. All kinds of art in the world are fundamentally fueled by inspiration. It keeps ingenious minds active. Many people are inspired by the creations or ideas of others. However, such obvious copying of concepts, as in this case, gives a terrible perception of the art community as a whole. There seems to be a running trend of reproducing an already existing works to mint quick money. This thirst of quick fame and money might be beneficial for an individual but it throws the integrity of the art to the wolves. The audience should also not to be taken for granted. After watching a movie, the crowd searches the internet to validate their concerns because they are essentially convinced that no film produced in Odia can be original. This is even more worrisome because it represents a significant decline in audience appreciation and sensitivity for the arts. This perception can spell disaster for the Odia cine industry.

37. Plagiarism in the film business is made to go unpunished and unregulated by the heedlessness and lack of standards against such practices. In fact, due to lack of regulation and significant costs of litigation, the majority of dissatisfied creators choose not to pursue legal action. A strict system of checks and balances must be implemented in order to support and encourage the triumph of originality in the odia cine tradition. Even the film business should develop a self regulatory framework to deal with plagiarism, educate people about it, and punish guilty creators.

38. Here, I would also like to opine that the 'duty of judgement' is a sacred one; be it a judge of law or the jury of the cine awards. A candidate at the helm of affairs should demonstrate courtesy, open-mindedness, courage, understanding, compassion, humility, and common sense. These traits ought to be consistently displayed by the Jury.

39. The Jury should be mindful that their duty is the application of standards of highest quality to the matters of consideration, that the state is an institution of law and not of men. The jury should fulfil their duty with a due regard to the integrity of the system of the law and integrity of arts, remembering that he/she is not a depositary of arbitrary power, but a judge with the responsibility to uphold the integrity of themselves as well as the institution. The irregularities as seen in this case could easily have been avoided had the jury been a little more vigilant and mindful of their position of great responsibility. The jury members are great stalwarts of Odia cinema and nothing but

the highest standards of integrity and vision is expected of them. I firmly believe that the jury would be impartial and truthful in their approach and strive to represent a vision of evolutionary creativity that is espoused in the industry.

40. In light of the aforesaid discussion and having regard to the present position of law, I have no hesitation in coming to the conclusion that the writ petitioner shall be granted relief by way of a writ and the present Writ Petition is allowed.

41. The impugned award list shall be trashed and a fresh list of nomination shall be published keeping in rules that govern the procedure. The impugned movies i.e. “KHUSI” and “GOLMAL LOVE” shall not be considered for any award category in the fresh list.

42. In such view of the matter, this Court directs that the 31st Odisha State Film Award, 2019 shall be declared within one month from today.

43. Accordingly, this Writ Petition is disposed of.

44. Urgent certified copy of this order be granted on proper application.

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