

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.08.2019

+ **W.P.(C) 674/2015 & CM No. 1181/2015**

SAI CINE PRODUCTIONS

..... Petitioner

Versus

**CENTRAL BOARD OF FILM CERTIFICATION
AND ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Colin Gonsalves, Sr. Advocate
with Ms Anupradha Singh, Advocate.
For the Respondents : Ms Maninder Acharya, ASG with Mr
Anurag Ahluwalia, CGSC, Mr Abhigyan
Siddhant, Mr Kartikeya Rastogi, Mr
Kaartikeya Rastogi, Mr Viplav Acharya,
Mr Harshul Chowdhryadn, Ms Ikshita
Singh, Advocates for UOI/CBFC.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 21.08.2014 passed by the Chairman, Central Board of Film Certification (hereafter 'CBFC') withdrawing the Certificate dated 29.05.2014 issued to the Cinematographic Film captioned 'Kaum De Heere'. The petitioner also impugns an order dated 07.10.2014 passed by the Film Certification Appellate Tribunal (hereafter 'FCAT'), rejecting the petitioner's appeal against the order

dated 21.08.2014 preferred under Section 5C of the Cinematograph Act, 1952 (hereafter 'the Act').

2. The petitioner claims that the impugned order dated 21.08.2014 is without jurisdiction as CBFC does not have the power to review its own decision. CBFC had granted an "A" Certificate after viewing the feature film in question and the same could not be reviewed. It is also the petitioner's case that the said order dated 21.08.2014 was passed at the instance of the Central Government, which has no power to issue any such directions.

3. Briefly stated, the relevant facts to address the controversy are as under:

3.1 The petitioner is a partnership firm engaged in the business of film production. The petitioner had purchased a cinematographic film from the original owners/producers. The controversy in the present case relates to the Punjabi language feature film – 'Kaum De Heere'. It is stated that the said feature film is based on the events that followed the storming of the golden temple and the assassination of the Indian Prime Minister in 1984. Apparently, the cinematographic film features actors playing the characters of Satwant Singh and Kehar Singh, who were involved in the assassination of the then Prime Minister of India. According to the petitioner, the feature film has depicted historical events and the sentiments of the Sikh Community at the material time. The feature film concludes with the hanging of the persons accused of assassinating the then Indian Prime Minister.

3.2 On 13.01.2014, the petitioner made an application to CBFC for certification of the feature film in question. The said film was examined by the Examination Committee on 19.01.2014 and the Examination Committee recommended that the certification be refused. The Examination Committee was of the view that the feature film violated Guidelines 2(xii) and 2(xv) of the Guidelines dated 06.12.1991, notified by the Ministry of Information and Broadcasting for certification of films. The said Clauses of the Guidelines are set out below:-

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

2(xv) the security of the State is not jeopardized or endangered;”

3.3 The Examination Committee was of the view that the feature film sought to justify the assassination of the then Prime Minister of India.

3.4 Aggrieved by the said decision, the petitioner sought a review by the Revising Committee under Rule 24 of the Cinematograph (Certification) Rules, 1983. Accordingly, the Revising Committee was constituted which viewed the feature film in question. Admittedly, five members out of the seven members constituting the said Committee were in favour of granting “U/A” Certification with certain cuts to the film, while the remaining two members were of the view that the certification should be declined.

3.5 Thereafter, a Second Revising Committee was constituted. The Revising Committee so constituted comprised of seven members. The said Committee also viewed the film. Four out of the seven members of the Revising Committee were of the view that an “A” Certification with certain cuts be granted to the film in question. The other three members were of the view that the certification ought to be declined.

3.6 In terms of Rule 24(12) of the Cinematograph (Certification) Rules, 1983, the decision of the Revising Committee is required to be that of a majority of the members attending the examination of the film. In view of the decision of the majority members, CBFC issued an “A” Certificate to the film in question after certain cuts, which were considered as necessary.

3.7 On 14.08.2014, the Ministry of Home Affairs sent a letter to the Secretary, Ministry of Information and Broadcasting informing him that an input had been received with regard to the film in question, which was then scheduled to be released on 22.08.2014. It was informed that certain organizations in Punjab had opposed the screening of the film and had vowed to organize protests and demonstrations outside cinema halls in case of its release. The said letter further stated that it was apprehended that the “*the release of the movie might create disharmony among the Sikhs and Hindu leading to law & order problem*”. And, in view of the above, it was requested that the release of the said cinematograph film be withheld and a

special screening of the film be held for officers of the Ministry of Home Affairs.

3.8 It appears that, thereafter, the Ministry of Information and Broadcasting arranged for a special screening of the feature film on 17.08.2014 for officers of the Ministry of Home Affairs, Government of India.

3.9 Thereafter, on 21.08.2014, the Ministry of Home Affairs sent a letter stating that the contents of the film appeared to be contrary to certain observations made by the Supreme Court in its decision in the matter of *Kehar Singh and Ors. v. State (Delhi Admn.): (1998) 3 SCC 609*. It was also stated that the said feature film is likely to cause a serious law and order situation by arousing sentiments of the people and further cause disaffection amongst the armed forces. The Ministry of Information and Broadcasting was requested to take immediate action under the Act or any other provisions as may be deemed necessary.

3.10 Immediately upon receipt of the said letter – that is, on 21.08.2014 – the Ministry of Information and Broadcasting addressed a letter to the Chairperson, CBFC forwarding the aforementioned letters received from the Ministry of Home Affairs, with a request to treat them as objections/complaints calling for withholding of the release of the feature film in question. The Chairperson was requested to re-examine the film under Rule 32 of the Cinematograph (Certification) Rules, 1983.

3.11 The respondents have furnished a letter dated 21.08.2014 sent by the Chairperson of CBFC addressed to the Secretary, Ministry of Information and Broadcasting that she had re-examined the film on 22.08.2014 and it was her opinion that the film encourages the idea of taking the law into one's own hands and puts the interest of a community above that of national harmony. According to her, the same was against the interest of public order.

3.12 It is stated that on the same date, the Additional Secretary, Government of India, Ministry of Information and Broadcasting sent a letter responding to the letter dated 21.08.2014 received from the Chairperson, CBFC requesting her to take appropriate action in the matter.

3.13 It is stated that immediately on receipt of the letter dated 21.08.2014 from the Additional Secretary, Ministry of Information and Broadcasting, the Chairperson, CBFC issued the impugned communication dated 21.08.2014, communicating the decision to withdraw the certificate issued to the film in question.

3.14 Aggrieved by the same, the petitioner preferred an appeal before FCAT, which was dismissed by the impugned order dated 07.10.2014.

Submissions

4. Mr Colin Gonsalves, learned senior counsel appearing for the petitioner, has assailed the impugned orders on, essentially, two fronts. First, he submitted that the Chairperson of CBFC had no power to

review and cancel the certificate that was issued by CBFC. He contended that the said certification was issued by CBFC after the Revising Committee had viewed the feature film on two occasions. He submitted that there was no provision in the Act which empowered the Chairperson to override the decision of the Revising Committee. Next, he submitted that the feature film did not violate any guidelines and withdrawal of certification was violative of Article 19(1)(a) of the Constitution of India. He also relied on the decision of the Supreme Court in *M/s Prakash Jha Productions and Anr. v. Union of India and Ors.: (2011) 8 SCC 372* in support of his contention that once a feature film has been certified by CBFC for public exhibition, it cannot be subjected to further censorship by the Government.

5. Ms Maninder Acharya, learned ASG appearing on behalf of respondent no.1, fairly drew the attention of this Court to a decision rendered by the Supreme Court in *Union of India v. K.M. Shankarappa: (2001) 1 SCC 582* and the decision of the High Court of Karnataka in *K.M. Shankarappa v. Union of India: ILR 1990 KAR 4082*. She submitted that notwithstanding the above decisions, the Central Government has the power under Section 6(2) of the Act to direct that a film, which has been granted certification, be deemed to be an uncertified film in any part or the whole of India. She handed over a compilation of letters dated 21.08.2014 (as referred to above) and relied upon Rule 32 of the Cinematograph (Certification) Rules, 1983 in support of her contention. She contended that the decision to

withdraw certification was in accordance with Rule 32 of the said Rules.

Reasons and Discussion

6. At the outset, this Court finds it necessary to state that the letters dated 21.08.2014, as produced by the learned counsel for respondent no.1, do not inspire any confidence. It is difficult to understand how on a single date, that is, on 21.08.2014, the Ministry of Home Affairs had communicated its view that the feature film was likely to cause a serious law and order situation to the Ministry of Information and Broadcasting and on the same date, the Additional Secretary, Ministry of Information and Broadcasting had sent a communication directing the Chairperson, CBFC to re-examine the film. The Chairperson, CBFC had responded immediately and sent a letter dated 21.08.2014, conforming that she had re-examined the film. Curiously, she claimed to have re-examined the film on 22.08.2014 at 12:00 noon, which is one day after the date of the letter. The said letter was received by the Additional Secretary, Films on 21.08.2014 and he had, thereafter, issued another letter on the same date, that is, on 21.08.2014 directing the Chairperson, CBFC to take necessary action. She had acted instantaneously and issued the impugned communication withdrawing the certification.

7. Notwithstanding this Court's skepticism as to the aforesaid communications, for the purposes of this decision, this Court accepts the said communications to correctly reflect the events that occurred

on 21.08.2014. The principal question to be addressed is whether the Chairperson, CBFC has the power to withdraw certification granted to a feature film.

8. The respondents have relied upon Section 6 of the Act, which is reproduced below:

“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 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 an uncertified film in the whole or any part of India; or 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. Information and documents to be given to distributors and exhibitors with respect to certified films.”

9. A plain reading of Section 6(1) of the Act indicates that the Central Government has the power to call for the records of any proceedings in relation to any film, which is pending before or has been decided by CBFC or FCAT. The Central Government is required to make such inquiry into the matter as it considers necessary and thereafter, make an order in relation thereto as it deems fit. CBFC is required to dispose of the matter in conformity with any such order. The proviso to Section 6(1) of the Act mandates that no such order would be made prejudicially affecting the person to whom a certificate has been granted, except after giving him an opportunity for representing his views in the matter.

10. In the present case, Central Government has not passed any order under Section 6(1) of the Act requiring the Board (CBFC) to act in conformity with such orders. The chain of communication called upon the Chairperson, CBFC to take appropriate action so that the guiding principles of the Act are not violated by certifying the film for release. As noticed above, the Revising Committee had examined the film to ascertain whether the film conforms to the concerned Guidelines. Thus, the letter dated 21.08.2014 sent to the Chairperson, CBFC for ensuring the same, was clearly not in terms of Section 6(1) of the Act. More importantly, the petitioner was not granted any opportunity prior to issuing any such order, as is stipulated under the proviso to Section 6(1) of the Act. The said proviso expressly provides that the Central Government shall not pass any order prejudicially affecting any person applying for a certificate or to whom a certificate has been granted as the case may be, except by giving him an opportunity for representing his views in the matter. The reference to such order is clearly an order passed by the Central Government under the main provision of Section 6(1) of the Act.

11. At this stage, it is also relevant to mention that in ***K.M. Shankarappa v. Union of India*** (*supra*), the Karnataka High Court had held that Section 6(1) of the Act, insofar as it enables the Central Government to exercise the power of revision against the decision of CBFC and FCAT, is violative of the basic structure of the Constitution. The Central Government had appealed against the said decision before the Supreme Court. The said decision was upheld by

the Supreme Court in *Union of India v. K.M. Shankarappa* (*supra*). It is relevant to note that the Court had observed that *once an expert body has considered the impact of a film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the State Government concerned to see that law and order is maintained.*

12. In view of the above, the reliance placed by the respondents upon Section 6(1) of the Act, is wholly misplaced. First of all, the said provision to the extent that it enables the Central Government to exercise revisional powers in respect of the decisions rendered by CBFC, has been held to be unconstitutional. Second, even if Section 6(1) of the Act was operative, the respondents had not followed the procedure as contemplated therein. The petitioner was not granted any opportunity to represent its views before the direction was issued. Further, Section 6(1) of the Act also does not contemplate the issuance of any direction to the Chairperson of CBFC.

13. Ms Acharya had referred to Rule 32 of the Cinematograph (Certification) Rules, 1983 and had contended that the procedure as specified under the said Rules was followed. Rule 32 of the said Rules is set out below:-

“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.”

14. Sub-rule (6) of Rule 32 of the said Rules clearly specifies that the said Rule is applicable only in cases where revisional powers are exercisable by the Central Government under Section 6 of the Act. As stated above, in *Union of India v. K.M. Shankarappa* (*supra*), the Supreme Court had upheld the decision of the Karnataka High Court whereby it was held that the revisional powers in favour of Central Government in respect of decisions of the CBFC and FCAT are

unconstitutional. In this view, Rule 32 of the said Rules is wholly inapplicable as, in any event, the said Rule could only apply in cases where revisional powers were exercisable by Central Government under Section 6 of the Act.

15. Rule 32 of the said Rules has little application after the decision of the Supreme Court in *Union of India v. K.M. Shankarappa* (*supra*). Even if it is accepted – which this Court does not – that the said Rule could be applied, it was necessary that the said Rule be read in conjunction with Section 6 of the Act. The Cinematograph (Certification) Rules, 1983 have been framed by the Central Government in exercise of powers under Section 8 of the Cinematograph Act, 1952, which is for the purpose of carrying into effect the provisions of the Act. Thus, the said Rule has to be interpreted in a manner so as to ensure that there is no repugnancy with the main provisions of the Act. If Section 6(1) of the Act was valid, the Central Government was required to exercise its revisional powers strictly in the manner as specified therein. It was required to hold an inquiry and pass an order after hearing the applicant. The CBFC in turn, would pass an order in conformity with revisional order passed by the Central Government. In terms of Sub-rule (5) of Rule 32 of the said Rules, the Central Government was required to conduct an inquiry after receipt of the opinion of the Chairman of CBFC and then, pass an order. In terms of proviso to Section 6(1), such order could be passed only after hearing the person applying for the

certificate or to whom the certificate has been granted. As stated above, this procedure has not been complied with.

16. Ms Acharya also contended that the Central Government retains the power to pass orders to take steps under Sub-section (2) of Section 6 of the Act. This Court does not consider it necessary to examine this contention as clearly no notification under Section 6(2) of the Act has been issued by the Central Government.

17. In view of the above, the petition is allowed and the impugned orders dated 21.08.2014 passed by CBFC and 07.10.2014 passed by FCAT are set aside. The pending application is also disposed of.

18. The parties are left to bear their own costs.

AUGUST 27, 2019
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VIBHU BAKHRU, J

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