

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 34681 of 2023****Between:**

Telugu Desam Party
Rep. by its General Secretary

... Petitioner

And

The Union of India
Rep. by its Secretary,
Ministry of Information & Broadcasting
and others

... Respondents

JUDGMENT PRONOUNCED ON: 21.01.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 34681 of 2023****% 21.01.2024****Between:****# Telugu Desam Party
Rep. by its General Secretary**

..... Petitioner

And**\$ The Union of India
Rep. by its Secretary,
Ministry of Information & Broadcasting
and others**

... Respondents

< Gist:

> Head Note:

**!Counsel for the Petitioner: Mr Unnam Muralidhar,
Senior designated counsel
^ counsel for Respondents 1 to 4 : Mr A. Narasimha Sharma,
Senior designated counsel
Addl.Solicitor General of India
^Counsel for respondents 5 &6: Mr A.Venkatesh
Senior designated counsel
^counsel for respondent No.7: Mr Rajagopallavan Tayi****? Cases Referred:**

1. (2016) 7 SCC 221
2. (1981) 1 SCC 246
3. (2021) 6 SCC 771
4. (1998) 8 SCC 1
5. (2021) SCC online SC 801
6. (2006) 1 SCC 75
7. (1974) 4 SCC 3

8. 55 American LR 171
9. 1983 (1) SCC 124
10. 2003(8) SCC 361
11. (1978) 1 SCC 248
12. (2001) 5 SCC 664
13. (2010) 9 SCC 496
14. (1951) SCC 1088
15. (1978) 1 SCC 248
16. AIR 2009 Supl SC 561
17. (1974) ICR 120 (NIRC)
18. (2010) 3 SCC 732
19. (2007) 3 SCC 587
20. (2023) 6 SCC 1
21. (2004) 2 SCC 447
22. (2017) SCC online Hyd 426
23. 2021 SCC online SC 3422
24. (1924) 1 K.B.171 by Atkin L.J.

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 34681 of 2023****ORDER:**

Heard Mr Unnam Muralidhar Rao, learned senior designated counsel appearing on behalf of the petitioner, Mr A. Narasimha Sharma, learned senior designated counsel, Additional Solicitor General of India, appearing on behalf of respondents 1 to 4, learned senior designated counsel Mr A.Venkatesh, appearing on behalf respondent Nos. 5 and 6 and Mr Rajagopallavan Tayi, learned counsel appearing on behalf of respondent No.7.

2. In pursuance to the Division Bench Orders dated 03.01.2024 passed in W.A.No. 2 of 2024, this Court heard the matter on three occasions in three spells on 09th, 10th, and 11th of January 2024 and directed for listing of the matter on 22nd January, 2024 for orders.

3. On 9th January 2024 itself, even before this Court commenced hearing the present case on merits, referring to a Division Bench Judgement of Bombay

High Court in similar circumstances, when this Court suggested for Constitution of a Three Member Committee for the purpose of watching of the movie 'Vyuham' and submitting a report to the Court, the said suggestion of this Court was welcomed by the Learned Senior Counsel appearing on behalf of the Petitioner, it was however opposed by the Learned Senior Counsel Mr. A. Venkatesh appearing on behalf of Respondents No.5 and 6 on the ground that the expert body constituted under the Cinematograph Act, 1952 imposed few cuts and had permitted the release of the movie "Vyuham" vide impugned proceedings dated 13.12.2023 and therefore the matter has to be heard and decided on merits, and the Learned Senior Counsel Mr. Narasimha Sharma, Additional Solicitor General of India, appearing on behalf of Respondents No.1 to 4, submitted that the matter should be heard on merits first and the relevant records perused which had been submitted to the Court as per the orders of this Court dated 28.12.2023 passed in I.A.No.2 of 2023 in W.P.No.34681 of 2023 and thereafter the Court could

take a decision in the matter and the Learned Counsel appearing on behalf of the 7th Respondent also expressed that the matter should be heard on merits first.

4. This Court in its orders dated 28.12.2023 passed in I.A.No.2 of 2023 in W.P.No.34681 of 2023 in detail recorded the submissions of all the learned counsel appearing in the matter and the said submissions shall be treated as part of the present order as well. In addition to the said respective submissions put-forth by all the learned counsel on record incorporated in the said order dated 28.12.2023, the written submissions filed by both the learned Counsel appearing on behalf of the Petitioner and also the learned Counsel appearing on behalf of the Respondents No.5 and 6 in the form of a Brief Note are also brought on record.

5. The main submissions put-forth on 09th, 10th and 11th of January 2024 by all the learned counsel on record are as follows:

I) The learned Senior Counsel Sri Unnam Muralidhar Rao appearing on behalf of the Petitioner mainly put-forth the following submissions :

A) It is the specific case of the Petitioner that the Writ Petitioner is a Political Party and registered under Section 29A of the RP Act, 1951. The main purpose of its existence is to contest and win the elections in the country and that the Petitioner herein has a legacy of 40 years in the Indian Politics and dispensed its duties as ruling party by forming the Government for 4 times i.e., for 20 years and as per the clear findings of the Examining Committee in its report dated 01.11.2023 and also the poster of the movie "Vyuham" which depicts two of its leaders as buffaloes with the background of TDP flags and volunteers, the Petitioner itself is directly defamed through the movie "Vyuham" thereby defaming and ridiculing the Petitioner and its leaders.

B) It is further the specific case of the writ petitioner that the Petitioner was kept in dark about the CBFC

proceedings, and it was not furnished with any copy of the Certificate, or the reasons recorded by Revising Committee for certifying the film. It had gained knowledge about the certification from social media and other public sources when the release date of 29.12.2023 was announced. The writ petitioner had to pick and gather information/ data relating to the certification of the film from various sources including a writ petition filed by the Producers (WP No.32374 of 2023). Accordingly, the writ petition was filed within (8) days from the date of certification. There is no delay at all, and the present writ petition was filed diligently a week before the scheduled release date. The Petitioner's main challenge pertains to the release of the movie "Vyuham" and not the Teasers/ Trailers. The Writ Petitioner relied on the expert committee (Examining Committee of CBFC) to conclude that the entire content in the movie is defamatory. It did not base its assumptions on the trailers and hence it is contended by the Learned Counsel appearing on behalf of the Petitioner on record that there is no delay on the

part of the Petitioner in filing the present writ petition a week before the scheduled release date.

C) It is principal contention of the Petitioner that Rule 24(9) of the Cinematograph Rules is violated and that the findings of the Examining Committee that the content in the movie is defamatory is not addressed by the Revising Committee. The reasonable restrictions under Article 19(2) of the Constitution of India, covers 'defamation' as one of the grounds under which the freedom of speech under Article 19(1)(a) can be restricted. Therefore, the case of the writ petitioner is that this restriction of Article 19(2) are also mandated under Section 5B of the Cinematograph Act, 1952 and also its Guideline No.2(xviii) of S.O.836E. When there is defamation, the said movie cannot be certified. As such, the Examining Committee of CBFC has conclusively, unambiguously and unanimously stated in its report that the movie is derogatory, defamatory and may amount of criminal contempt of court, these aspects ought to be addressed by the Revising Committee under Rule 24 of the Cinematograph (Certification) Rules,

1983 which admittedly has not been done in the present case.

D) Referring to the judgment reported in (2023) SCC Online SC Page 366, dated 05.04.2023 in Madhyamam Broadcasting Ltd., vs. Union of India & Others in particular paras 63, 64 and 65 of the said judgment the Learned Senior Counsel appearing on behalf of the Petitioner contended that when relevant material is disclosed in a sealed cover there are two injuries that are perpetuated. First, the documents are not available to the affected party. Second, the documents are relied upon by the opposite party in the course of the arguments, and the Court arrives at a finding by relying on the material. In such a case, the affected party does not have any recourse to legal remedies because it would be unable to prove any inferences from the material before the adjudicating authority.

E) This Court in fact in its order dated 28.12.2023 directed the Respondents No.1 and 4 to place the original records pertaining to the subject impugned

proceedings dated 13.12.2023 before this Court for perusal by the Court and the same was kept in a sealed envelope and the said envelope was passed on to the Court for perusal by this Court and therefore this Court opines that the plea put-forth above by the Learned Senior Counsel appearing on behalf of the Petitioner is untenable (after hearing the aforesaid submission of the Learned Senior Counsel appearing on behalf of the Petitioner soon thereafter however, the Learned Senior Counsel appearing on behalf of the Respondents No.1 to 4 removed the original record from the envelope and submitted the original record of the present case to the Court).

F) Action of the Respondents No.3 and 4 in issuing the impugned certificate dated 13.12.2023 in favour of the 5th and 6th Respondents contrary to the "Refusal" by the Examining Committee ignoring the complaint/representation of the Petitioner addressed to the 3rd and 4th Respondent on 30.10.2023, 04.11.2023 and the representation/complaint dated 01.12.2023 of the

Petitioner addressed to the 3rd Respondent is in clear violation of principles of natural justice.

G) Placing reliance on the judgment of the Apex Court reported in (1980) 4 SCC 379 in S.L.Kapoor Vs. Jagmohan & Others dated 18.09.1980, in particular para 22 of the said judgment it is contended that the representations dated 30.10.2023, 04.11.2023 and 01.12.2023 made by the Petitioner had been ignored and the Petitioner had not been provided a minimal requirement of an opportunity and the impugned certificate dated 30.12.2023 had been issued by the 3rd Respondent prejudicial to the Petitioner ignoring Petitioner's specific request not to issue a certificate for public exhibition of the movie "Vyuham" and hence Petitioner's case rests on violation of principles of natural justice.

H) Placing reliance on the judgment of the Apex Court reported in Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi reported in (1978) 1 SCC 405 in particular para 56 of the said judgment, it is

contended that whatever standard of natural justice is adopted, it is essential that the person concerned shall have a reasonable opportunity of presenting his/her case, in view of the fact that the Petitioner specifically represented through representations dated 30.10.2023, 04.11.2023 and 01.12.2023 to the authorities concerned in relation to the subject issue and therefore the Petitioner cannot be denied a reasonable opportunity for consideration of Petitioner's request made vide the said representations.

I) Placing reliance on the judgment of the Apex Court reported in (1979) 2 SCC 529 in Mahindra & Mahindra Ltd., Vs. Union of India and Another in particular para 10 of the said judgment it is contended that the rectificatory power of the revising committee ought to have been properly exercised by the said committee and the said committee ought to have examined whether the principles for guidance in certifying films as stipulated under Section 5(b) had been strictly followed or not which exercise had not been done in the present case.

J) Placing reliance on the judgment of the Apex Court reported in (1961) SCC Online SC 38 in Harinagar Sugar Mills Ltd., Vs. Shyam Sundar Jhunjhunwala & Others and in particular referring to para 21 of the said judgment it is contended that the mere facts of the proceedings have to be treated as confidential as per Rule 22, Clause 4 and Clause 5 of the Cinematograph (Certification) Rules, 1983 does not prevent the 3rd Respondent in disclosing the reasons for not considering the Petitioners request not to issue a certificate for public exhibition of the movie "Vyooham" as put-forth in Petitioners representations/complaints addressed to the Respondents 3 and 4 herein.

K) Placing reliance on the judgment of the High Court of Andhra Pradesh at Hyderabad dated 13.12.2005 reported in (2005) SCC Online AP 1008 in Ambati Srinivasulu Vs. District Collector, Nellore and in particular paras 2, 3 and 4 of the said judgment it is contended that the Petitioner is entitled to know as to why the Petitioners request made vide Petitioners

representations/complaints dated 30.10.2023, 04.11.2023 and 01.12.2023 had not been considered by the Respondents No.3 and 4.

L) Placing reliance on the judgment of the Apex Court reported in (2016) 7 SCC 221 in Subramanian Swamy Vs. Union of India, Ministry of Law & Others, and in particular paras 50, 51, 52 and 53 of the said judgment it is contended that reputation is an internal and central facet of right to life as projected under Article 21 of the Constitution of India and that the reputation is an honour which deserves to be equally preserved by the downtrodden and the privileged and further referring to paras 98, 132, 133, 136, and 144, of the said judgment it is contended that in the name of freedom of speech and expression, the right of another cannot be jeopardised. Referring to para 195 of the same judgment it is submitted by the learned counsel that the right to free speech cannot mean that the citizen can defame the other and further protection of reputation is a fundamental right and also a human right and nobody has a right to denigrate others right to person or

reputation. Referring to para 198 of the same judgment it is contended by the learned Senior Counsel that the Petitioner herein had locus to file the present writ petition and the Petitioner is the person aggrieved and the test whether the Petitioner has a reason to feel hurt due to release of the movie 'Vooyham' is a matter to be determined by the Court depending on the facts of the present case.

M) Placing reliance on the judgment dated 10.02.2022 of the Madhurai Bench of Madras High Court in Maridhas Vs. S.R.S. Umari Shankar in particular paras 8 to 11 of the said judgment it is contended that the Petitioner herein is a recognized political party and has a right to sue and be sued and therefore the Petitioner is a juristic person. It is the specific plea of the Petitioner that the Petitioner itself is defamed as per the propaganda material and the clear findings of the report of the Examining Committee dated 01.11.2023.

N) Placing reliance on the judgment of the Apex Court reported (1981) 1 SCC 246 in Akhil Bharatiya Soshit

Karamchari Sangh (Railway) Vs. Union of India and others in particular referring to para 62 of the said judgment it is contended that the plea of the Respondents that the Petitioner has no locus is incorrect since as per the said judgment infact an Unrecognised Association can maintain a writ petition and a technical point that the Petitioner there under was an unrecognized Association was held to be unsustainable. The Apex Court in the said judgment observed that large body of persons having common grievance, though not belonging to recognized union can still maintain a petition before Supreme Court under Article 32 of the Constitution of India.

O) Placing reliance on the judgment of the Delhi High Court reported in (2022) SCC Online Delhi 3093 in Vinai Kumar Saxena Vs. Aam Aadmi Party and referring in particular to para 20 of the said judgment it is contended that Article 19(1)(a) of the Constitution afford the right of freedom of speech and expression to all persons. However, the same is subject to restrictions under Article 19(2) which includes defamation.

Therefore the right to freedom of speech and expression is not an unfettered right in the garb of which defamatory statements can be made to tarnish the reputation of a person.

P) Referring to the counter affidavit filed by the Respondents No.1 to 4, it is contended that there has been no objective consideration by the 3rd Respondent herein while issuing the impugned certificate dated 13.12.2023 when admittedly the examining committee on an earlier occasion unanimously decided to 'Refuse' certificate to the film 'Vyuham' and in its reasons for 'Refusal' of certificate very clearly observed that the film is derogatory towards few persons and their political parties which is against the guidelines 2(xviii) and further observed that the film by its decisive stand that Chandrababu Naidu has received kickbacks in Skill Development Scam, may lead to Contempt of Court, however, without assigning any reasons, without any justification, the Revising Committee had decided unanimously to give 'U' (Universal) Certificate holding erroneously that the stipulated procedure as per

Cinematograph Act 1952, Cinematograph Rules 1983 and Guidelines of the Film Certification U/s. 5B(2) of the Act had been followed while certification of the film.

Q) There is clear violation of Section 5B of the Cinematograph Act, 1952 r/w Guideline 2(xviii) of SO.836(E), There is violation of Rule 24(6) of the Cinematograph Rules, 1983. There is violation of Rule 24(9) of the Cinematograph Rules, 1983. There is violation of Article 14 of the Constitution of India.

R) The Learned Senior Counsel based on the aforesaid submissions contended that the Petitioner is entitled for the relief as prayed for in the present writ petition.

5.(II) The Learned Senior Counsel Mr. Narasimha Sharma appearing on behalf of the Respondents No.1, 2, 3 and 4 mainly contended as follows :

A) That the High Court cannot sit in an Appeal over a decision of an expert body and the High Court in its powers under Article 226 can only examine the decision

making process and not the decision itself and in the present case the decision making process is in conformity with law.

B) Placing reliance on the judgment dated 07.04.1995 passed in Sri Raghavendra Films, R.R. Road, Secunderabad Vs. Government of Andhra Pradesh & Others reported in (1995) 2 ALD 81 and in particular to paras 30 to 32 of the said judgment, it is contended that the opinion of the Advisory Panel must be given full weight and the Court should not interfere in the present writ petition with the conclusion of the body specially constituted to judge the effect of the film on the public, on the basis of which certificate of unrestricted exhibition of the film was issued.

C) It is contended that the 9-Member Revising Committee constituted as per the rules undertook the examination of the subject film as mandated U/s.4 of the Cinematograph Act, 1952 duly following Rule 22 and Rule 24 of the Cinematograph (Certification) Rules, 1983 and each member duly recorded his

recommendations in writing in accordance to law and therefore no interference is warranted in the present case.

D) Placing reliance on the aforesaid submissions and the averments made in the counter affidavit at paras 12, 14, 10, 15, 16 and 17 and also referring to the judgment of the Apex Court reported in (2020) 3 SCC 436 in *Indibly Creative Private Limited and Others Vs. Government of West Bengal and Others* it is contended that the writ petition has to be dismissed, since the film 'Vyuham' had been duly certified by CBFC and at this stage there cannot be any infringement of fundamental right to the freedom of speech and expression guaranteed under Article 19(1) of the Constitution of India.

5.(III) The Learned Counsel appearing on behalf of Respondent No.7 mainly put-forth the following submissions :

A) The movie "Vyoooham" is an artistic expression within the parameters of law.

B) The Petitioner cannot complain deprivation of principles of natural justice when rules prescribe confidentiality to be maintained as per Rule 22, Clause 4 & 5 of the Cinematograph (Certification) Rules, 1983.

C) No reputation is damaged as alleged by the Petitioner.

D) Referring to the representations/complaints of the Petitioner dated 30.10.2023, 04.11.2023 and 01.12.2023, it is contended that since it is pointed out in the said representations/complaints that the movie 'Vyuham' contains defamatory material and was produced and directed to tarnish Mr. N.Chandrababu Naidu's reputation and influence voters in the State of Andhra Pradesh at the behest of Mr. Jagan Mohan Reddy and since the impact is in the State of Andhra Pradesh and not in the State of Telangana, therefore this Court at Telangana has no jurisdiction to entertain the present writ petition.

E) Learned Counsel placing reliance on the judgment of the Apex Court reported in (2020) 3 SCC 436 in Indibily Creative Private Limited and Others Vs. Government of West Bengal and Others and in particular paras 23, 27, 28, 30.1, 30.2, 30.3, 32, 33.1, 34.1, 35.1, 35.2, 36, contended that legitimate creation by a creative artist cannot be gagged or suppressed on the ground of intolerance of a section of supersensitive people, not used to hearing dissent, and further that the rights of artists have to be placed above popular notions of acceptability and non-acceptability and those who feel film is unacceptable have option not to watch it.

F) The Learned Counsel further placing reliance on the judgment of the Apex Court reported in (2020) 2 SCC Online SC 1892 contends that the film "Vyuham" has already been given the requisite certificate by the Central Board of Film Certification (CBFC) under the Cinematograph Act, 1952 and the same indicates that the film is not defamatory.

G) The Petitioner has no locus to maintain the present writ petition since the authorization filed before this Court is issued by the President, A.P. State Telugu Desam Party in favour of Sri Nara Lokesh, Central General Secretary to represent Telugu Desam Party in legal cases in the capacity of Central General Secretary, who is the deponent of the present writ petition and he had not been authorized by the National President of the Telugu Desam Party, Sri N. Chandrababu Naidu.

5(IV) The Learned Senior Counsel Mr. A.Venkatesh appearing on behalf of Respondents No.5 and 6 mainly put-forth the following contentions.

A) Referring to the averments made by the Petitioner at para 7 of the supporting affidavit filed in support of the present writ petition it is contended that the Deponent in the present writ petition is a member of a political party and a son of a member of a political party and therefore is not a juristic entity. Hence the Petitioner has no locus to file the present writ petition.

B) There is no averment in the affidavit which explains or refers to the details of the alleged defamation of the petitioner herein i.e., Telugu Desam Party, Hyderabad in the movie "Vyuham". No content which is defamatory has been explained by the Petitioner in the writ affidavit.

C) Referring to para 7 of the judgment dated 10.02.2022 passed in Maridhas Vs. S.R.S. Umari Shankar it is contended that there is nothing on record to show that the Petitioner had been authorised by the Petitioner's party President at the National level to file the present writ petition. Referring to para 12 and para 15 of the said judgment the Learned Senior Counsel contends that the Petitioner failed to explain the defamation of the Petitioner political party and the Petitioner infact had no authorization to file the present writ petition.

D) Referring to para 8 of the affidavit filed by the Petitioner in support of the writ petition it is contended

that the Petitioner herein cannot file the present writ petition unless the bye-laws are registered.

E) Placing reliance on the judgement (2017) SCC Online Chattisgarh 1628 and in particular referring to para 5 and para 6 of the said judgment it is contended that the Petitioner having been registered U/s.29-A of the Representation of the People's Act, cannot be treated as a person in eyes of law entitled to file a writ petition and seek relief under Article 226 of the Constitution of India, more so when it is averred by the Petitioner at para 40 of the affidavit filed in support of the writ petition that the Petitioner is a body of persons and a registered political party.

F) It is contended that the guideline No.2 (xviii) has to be read along with its explanation and the Petitioner had omitted the explanation in the affidavit filed in support of the present writ petition at para 31 and it is but essential to read guideline No.2(xviii) along with its explanation and not the guideline No.2(xviii) alone, and further a bare perusal of the explanation clearly

indicates that the scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of the Court will come under the term "Contempt of Court" and therefore the averments made by the Petitioner at para 30 of the affidavit filed in support of the present writ petition would not amount to Contempt of Court as stated by the Petitioner in the said para.

G) Placing reliance on the judgment of the Federal Court of Malaysia dated 27.04.2022 in *Lim Lip Eng Vs. Ong Ka Chuan* and in particular referring to paras 6, 24, 34, 36, 39, and 61 of the said judgment it is contended that the persons holding public offices must not be thin-skinned with reference to the comments made on them. Placing reliance on the judgement reported in (2014) SCC Online Delhi 1369 in particular para 19 of the said judgment, the Learned Senior Counsel contended that person holding a public office should be thick skinned so as to complain about the allegations or about the write ups against a person holding a public office in the media or through telecast unless and until they are grossly defamatory per se.

H) It is contended that the judgment relied upon by the Counsel for the Petitioner reported in (1981) 1 SCC 246 does not apply to the facts of the present case and that it is only the individual who can be defamed and not a political party and the Petitioner is not a body corporate.

I) Placing reliance on the judgment reported in 2006 (90) DRJ 714 in particular paras 12 and 13 of the said judgment it is contended that an action for defamation can be instituted only by a person who is defamed and not by others viz., family members, relatives and friends etc.

J) Placing reliance on the judgment reported in Balasaheb Keshav Thackeray Vs. State of Maharashtra and another reported in 2003 (1) Mh.L.J, it is contended that the writ petition filed by the member of the political party alleging defamation against its leader including President of the party is not maintainable since the Petitioner is the not the person aggrieved U/s.199(1) of Criminal Procedure Code.

K) Placing reliance on the judgment of the Apex Court reported in 1994 (6) SCC 632 in R. Rajagopal and another Vs. State of Tamilnadu and others in particular para 22 of the said judgment and further placing reliance on the judgment reported in (2022) SCC Online Delhi 679 in Kailash Gahlot Vs. Vijender Gupta and others and in particular referring to para 45 of the said judgment, and placing reliance on para 78 of the judgment reported in (2022) SCC Online Delhi 3368 in Ruba Ahmed & Others Vs. Hansal Mehta & Others, it is contended that neither the government nor the officials who apprehend that they may be defamed, have the right to impose a prior restraint for release of a movie which has been certified for release by competent authority under the Rules and the remedy of the public officials will arise only after watching the movie on its release since the Court would not have any material before it to take prima facie view that what would be released would infact result in loss of reputation and hence the defamation essentially can be asserted only after the movie has been released.

L) Placing reliance on the judgment reported in (2017) SCC Online Delhi 9576, it is contended that though the teaser is released in mid of October 2023, the Petitioner approached the Court only December 2023 only with a malafide intention to obstruct the release of the movie, since once the expert statutory authority has granted the due certificate for exhibition of the film the release of the movie cannot be stopped.

M) Placing reliance on the judgment reported in (2014) SCC Online Delhi 1369 it is contended that the Petitioner herein failed to explain even in one line in what manner defamation is done.

N) Placing reliance on the judgement reported in Manu/SCOR/42447/2015, dated 30.03.2015 in Harinder Singh Sikka Vs. Union of India, it is contended that it is well settled that the CBFC sometimes grants certificates subject to certain excisions and modifications and once the same are carried out there cannot be any kind of obstruction for exhibition of a film.

O) Placing reliance on the judgement reported in (2012) SCC Online 231 of the High Court of Andhra Pradesh at Hyderabad in **Suryalok Film Factory, Mumbai Vs. R. Maheshwari & Others**, it is contended that the Central Board of Film Certification after thoroughly considering the recommendations of the revising committee and after considering all the aspects had granted certification to the film in question and the same cannot be interfered at this stage.

P) Placing reliance on the judgement reported in (2018) 1 SCC 761 in **Viacom 18 Media Private Limited & others Vs. Union of India** and in particular referring to para 16 of the said judgment it is contended that once the certificate has been issued, there is a prima facie presumption that the authority concerned has taken into account all the guidelines including public order.

Q) Placing reliance on the judgement of the Apex Court reported in (2018) 1 SCC 778 in **Nachiketa Walhekar Vs. Central Board of Film Certification & another**, it is contended that since Respondent No.3 has

granted the certificate and only something with regard to the Petitioner which was shown in the media is being reflected in the film, this Court should restrain itself in entertaining the writ petition or granting injunction.

R) Placing reliance on the judgement of the Apex Court reported in (2018) 17 SCC 516 in Adarsh Co-operative Housing Society Ltd., Vs. Union of India & Others, it is contended that once the certificate has been issued by the 3rd Respondent there is a prima facie a presumption that the authority concerned has taken into account all the guidelines including public order.

S) The Petitioner herein is a political party which is only recognized U/s.29-A of Representative of PP's Act, 1951 and hence the Petitioner cannot maintain a writ petition much less for defamation since the Petitioner is not a juristic person.

T) The General Secretary through whom the writ petition has been filed does not possess the Authority to file the instant writ petition. Letter of Authority filed

before the Court was executed on 22.12.2023 whereas the present writ petition was filed on 21.12.2023.

U) The Letter of Authority ought to have been given by Mr. Nara Chandrababu Naidu himself who is the National Party President and not by Mr. K. Atchannaidu who is A.P. State President of the Petitioner party.

V) Political party is not a body recognized under law.

W) Letter and Pleading show that the President of Petitioner party was defamed and not the political party itself.

X) Recommendations of the Revising Committee which consist of not more than 9 members of the Board and Chairman is above the Examining Committee which consists of 4 members of Advisory Panel and an Examining Officer and hence the decision of the Revising Committee is final.

Y) As per Section 7F of Cinematography Act, 1932 no legal proceeding shall lie against CBFC or its Officers/

Members in respect of anything that is done in good faith or intended to be done under this Act.

Z) As per Rule 24(8) the Revising Committee is furnished with translations of the dialogues, speeches and songs featuring in the film.

AA) Filing of the present writ petition without viewing the film is premature as admitted by the Petitioner at para 25 and 29 of the affidavit filed by the Petitioner in support of the present writ petition.

AB) No averments have been made with respect to defamation vis-a-vis the Petitioner party.

AC) There is delay on the part of the Petitioner in filing the writ petition. The teaser was released on 23.06.2023 and 24.06.2023 and trailer was released on 15.08.2023, 13.11.2023, the revised release date of the movie was announced to be 29.11.2023 and the writ was filed only on 22.12.2023 and the Petitioner therefore cannot approach the Court at the eleventh hour.

AD) Telugu Desam Party is not an ascertainable body and therefore cannot claim defamation under Sec, 499 of IPC.

AE) It is contended that in Indian National Congress vs Union of India, Division Bench of Chattisgarh High Court held that merely because the party is recognized under Sec. 29-A of Representative of Peoples Act, 1951 would not be sufficient to recognize the party as a juristic person and would not entitle it to institute proceedings.

AF) In R. Rajagopal vs. State of TN the Supreme Court held that public figures cannot seek prior restraint on publication of defamatory content.

AG) In Balasaheb Keshav Thackery vs. State of Maharashtra the Supreme Court while dealing with a criminal complaint filed by congressmen alleging defamation held that even assuming that the alleged statements attributed are defamatory to the Congressmen as a class, still it cannot be said that the complainant is entitled to file the complaint since congressmen are not an ascertainable body of persons.

AH) In Krishnaswami vs. CH Kanaran it was held by Kerala High Court that Marxist Communist Party is an unascertainable body and it cannot be said that each and every member of such party can allege defamation.

AI) In RBEF (Ritnand Balved Education Foundation) vs. Alok Kumar it was held by Delhi High Court that when defamatory statements are aimed against members of the institution then such members would not have the locus standi to bring in an action in name of the institution.

AJ) In Viacom 18 Media (P) Ltd vs Union of India it was held by the Supreme Court that once the certification has been issued there is prima facie a presumption that the authority concerned has taken into account all the guidelines.

AK) In Harinder Singh Sikka vs. Union of India Court it was held by Supreme Court that once the modifications/excisions are carried out there cannot be any kind of obstruction for exhibition of the film.

AL) In M/s Suryalok Film Factory, Mumbai vs. R Malleshwari and Others Telangana High Court held that once certification is made by a high- powered board of film certification which is a specialized composition there is an unrebuttable presumption in favour of the statutory certificate.

AM) In Ruba Ahmed & Others vs. Hansal Mehta & Others, Delhi High Court held that defamation can only be asserted after the movie has been released.

AN) In Tamil Nadu Telugu Yuva Sakthi vs. Union of India the division bench of the Hon'ble Telangana High Court held that when the movie has not been released and the person is unaware of the contents of the movie, it will be dangerous to interfere with the release of the movie.

AO) In Vadlaprasad Naga Vara Prasad vs. CBFC A.P. High Court held that allegations of defamation based on inference drawn in print media when movie has not

been released cannot be sufficient for asserting defamation.

AP) In *Kailsh Gahlot vs. Vijender Gupta*, Delhi High Court held that the remedy for the person, who fears that he would be defamed would arise only after the publication. On a probability that a publication could defame a person there is no right to seek a prior restraint.

AQ) In *Essel Infra Projects Ltd. vs. Devendra Prakash Mishra*, Bombay High Court and in *Challa Subbarayadu vs. Darbha Ramakrishna* the A.P. High Court held that in a case for libel the petitioner must specify the defamatory words and how such words are defamatory.

AR) In *Naveen Jindal vs. Zee Media Corporation Ltd.* Delhi High Court relying upon *Kartar Singh* case held that public persons should be thick skinned. Publication will not constitute defamation even if content is inaccurate, distorted and not fully true.

AS) In Bennett Coleman and Co vs. K Sarat Chandra, Telangana High Court held that least protection from defamation is given to public officials and when officials are accused of something that involves their behavior in office they have not only to prove all elements of defamation but also that person acted with actual malice.

AT) In Goldsmith and Another vs. Bhojrul and Others Queens Bench U.K. decision, and others the court held that in a democratic society it would be contrary to public interest to permit a political party which is putting itself forward for office or to govern to institute cause of action for defamation.

AU) In F.A Picture International vs. CBFC, Supreme Court held that Protection guaranteed under Article 19 permits makers to allude to incidents which have taken place and present a version of those incidents.

AV) In Ujwal Anand Sharma vs. Union of India the Delhi High Court refused to stay release of the film on the grounds of delay and laches alone.

AW) In Adarsh Cooperative Housing Society Ltd. vs. Union of India and Others, Supreme Court held that doctrine of sub-judice may not be elevated to such an extent that some kind of reference or allusion to member of society would warrant negation of right to freedom of speech and expression.

AX) In Krishna Kishore Singh vs. Sarla Sarogi, Delhi High Court held that that investigative agencies do not rely on films for investigation or judicial pronouncements. In order to claim right to fair trial the person must demonstrate how the film would impair the fairness in investigation or trial.

AY) In Nachiketa Walhekar vs. CBFC & Anr the Supreme Court held that when the film merely depicts what was portrayed in the media the court should restrain itself from entertaining the writ petition.

AZ) Placing reliance on the aforesaid submissions the Learned Senior Counsel appearing on behalf of

Respondent No.5 and 6 submitted that the writ petition has to be dismissed.

6. The Learned Counsel on record appearing on behalf of the Petitioner in reply to the submissions made on behalf of all the learned counsel appearing on behalf of all the Respondents, mainly puts-forth the following submissions.

i) Placing reliance on the judgment of the Apex Court reported in (2012) 7 SCC 340 in DESIYA MURPOKKU DRAVIDA KAZHAGAM (DMDK) and Another Vs. Election Commission of India, in particular paras 110 and 112 it is contended that political parties are no doubt not citizens, but their members are generally citizens and therefore any restriction imposed on political parties would directly affect the fundamental rights of its members. The learned Counsel on record appearing on behalf of the Petitioner further contended that the 10th Schedule which is a recent addition to the Constitution refers to the political parties either recognized or unrecognized and therefore the present writ petition is

maintainable against the Respondents herein and the writ petitioner has the locus to file the present writ petition.

ii) Placing reliance on para 62 of the judgment reported in (1981) 1 SCC 246, it is reiterated that the present writ petition is maintainable and the impugned certificate dated 13.12.2023 issued by the 3rd Respondent is in clear violation of Article 14 and Article 21 of the Constitution of India.

iii) Placing reliance on the judgment of the Apex Court reported in (2020) 19 SCC 241, in Popatrao Vyankatrao Patil Vs. State of Maharashtra and others and in particular referring to para 14 of the said judgment it is contended that the State Government must do what is fair and just to the citizen and should not as far as possible take up a technical plea to defeat the legitimate and just right of a citizen.

iv) Placing reliance on the judgment of the Apex Court reported in (2006) 1 SCC 75 in Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh & Another dated 10.11.2005

and referring in particular to para 17 of the said judgment it is contended that procedural defects and irregularities which are curable should not be allowed to defeat substantial rights or to cause injustice.

v) Placing reliance on the judgment reported in (2023) SCC Online Calcutta 2287 in *Chattisgarh Sponge Iron Manufacturers Association Vs. Union of India*, it is contended that an executive authority must rigorously hold to the standards by which it professes its actions to be judged, and it must scrupulously observe those standards, on pain of invalidation of an act in violation of them and the Respondents No. 3 and 4 in the present case in spite of receiving representations/complaints from the Petitioner dated 30.10.2023, 04.11.2023 and 01.12.2023 failed to respond to the same and the 3rd Respondent hastily issued the impugned certificate dt. 13.12.2023 in favour of the 6th Respondent for theatrical release of the film/movie "Vyuham" and thus failed to pass the test of non-arbitrariness.

vi) Referring to Section 499 IPC which deals with definition of defamation it is contended that the Petitioner herein is a person aggrieved since the Petitioner political party is in existence for the last 40 years and the same is being defamed.

vii) Referring to the judgment of the Apex Court reported in (2016) 7 SCC 221 in Subramanian Swamy Vs. Union of India in particular referring to para 144 of the said judgment it is contended that the right to reputation is a constituent of Article 21 of the Constitution of India and the reputation being an inherent component of Article 21 should not be allowed to be sullied solely because another individual can have its freedom.

viii) Referring to the judgment dated 10.02.2022 of the Madurai Bench of Madras High Court in Maridhas Vs. S.R.S. Umari Shankar in particular para 13 of the said judgment which further refers to the judgment of the Apex Court reported in (2001) 6 SCC 30 in John Thomas Vs. K.Jagadeesan (Dr) it is contended that the

Petitioner being a political party for the last more than 4 decades is being defamed and therefore the present writ petition filed by the Secretary of the party would be definitely maintainable.

ix) It is contended that the Petitioner is an aggrieved person as per Section 499(2) IPC r/w Section 3 (42) of the General Clauses Act, 1897 which defines that person "shall include any company or association or body of individuals whether incorporated or not", and further that the Petitioner is a political party and a distinct entity in itself enjoying constitutional recognition on account of introduction of the X Schedule in the Indian Constitution and the Petitioner herein itself is a separate entity and therefore the present writ petition filed by the Petitioner herein under the scheme of Article 32 of the Constitution is a constitutionally recognised body under the scheme of constitution itself.

x) The learned Counsel based on the aforesaid submissions contended that the present writ petition has to be allowed as prayed for and further submitted

that the Petitioner is also entitled to know the reasons which necessitated the issuance of the certificate dated 13.12.2023 in favour of the 6th Respondent for theatrical release of the film/movie "Vyuham" without considering the Petitioner's complaints/representations dated 30.10.2023 and 04.11.2023 addressed to the Respondents No.3 and 4 herein and 01.12.2023 addressed to the 3rd Respondent herein which had been received by the Respondents No.3 and 4 but however, had been totally ignored by them in clear violation of principles of natural justice.

DISCUSSION :

7. The preliminary objection raised by the Respondents herein in so far as the locus of the Petitioner in filing the present writ petition is concerned is discussed and answered as under :

1) The Writ Petitioner is a political party registered under Section 29A of the RP Act, 1951. It is an Association/Body of Persons.

2) A bare perusal of Section 499 of IPC indicates that Section 499 of IPC penalizes harming the reputation of any person. Explanation 2 to Section 499 of IPC is extracted hereunder :

499 IPC : "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person".

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

3) A bare perusal of Explanation 2 to Section 499 IPC (referred to and extracted above) indicates that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

4) Section 3 (42) of General Clauses Act, 1897 defines person as under :

(42) "person" shall include any company or association or body of individuals, whether incorporated or not;

5) Explanation 2 to Section 499 of IPC, r/w Section 3(42) of General Clauses Act, 1897 clearly indicates that the expression person occurring in the main part of Section 499 of IPC would obviously include a political party i.e., the Petitioner herein.

6) The expression "political party" is defined in para 2(1)(h) of the Election Symbols (Reservation and Allotment) Order, 1968, as under :

"political party" means an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951;

7) Although till recently the constitution has not expressly referred to the existence of political parties, by the amendments made to it by the constitution (Fifty Second Amendment) Act, 1985, there is now a clear recognition of the political parties by the constitution as distinct entities enjoying constitutional recognition and

the Tenth Schedule to the constitution which is added by the above Amending Act acknowledges the existence of the political parties. Thus a recognized political party is also a separate person apart from its members.

8) In the judgment dated 10.02.2022 of the Madurai Bench of Madras High Court in Maridhas Vs. S.R.S. Umari Shankar at para 9 and 11 it is observed as under:

“Para 9 - "The expression "person" occurring in the main part of Section 499 of IPC has to be inclusively construed. Section 3(42) of General Clauses Act, 1897 defines that "person" shall include any company or association or body of individuals, whether incorporated or not. It would obviously include a political party.

Para 11 - "... it has been observed that political parties are not bodies corporate but are only associations consisting of shifting masses of people, a recognized political party is very much a distinct entity enjoying constitutional recognition. This is particularly on account of the introduction of the X Schedule in the Indian Constitution. The legislative wing of a political party can issue commands through its whip. If they are disregarded by the individual legislator, then consequences as contemplated by law will follow. Just as a company was held to be a separate entity apart from its shareholders in the celebrated decision in Salomon

Vs. A Salomon & Co. Ltd [(1897) AC 22], a recognized political party is also a separate person apart from its members."

9) The Apex Court in the judgment reported in (2016) 7 SCC 221 in Subramanian Swamy Vs. Union of India at para 198 of the said judgment observed as under :

"The said provision is criticised on the ground that "some person aggrieved" is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of "some person aggrieved" is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this Court has determined the concept of "some person aggrieved". While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the "person aggrieved" is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In John Thomas v. K. Jagadeesan, while dealing with "person aggrieved", the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is

a matter to be determined by the court depending upon the facts of each case. In *S.Khushboo*, while dealing with "person aggrieved", a three-Judge Bench has opined that the respondents therein were not "persons aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance *M.S. Jayaraj V Commr. of Excise and G. Narasimhan* and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "person aggrieved", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words "some persons aggrieved" are determined by the courts depending upon the facts of the case.

10. In the Apex Court judgment dated 14.11.1980 reported in (1981) 1 SCC 246 in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) Vs. Union of India and Others* at para 62 it is observed as under :

"A technical point is taken in the counter affidavit that petitioner is an unrecognised association and that, therefore, the petitioner to

that extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through 'class actions', 'public interest litigation' and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney-General has taken no objection to a non-recognised association maintaining the writ petitions."

11) This Court taking into consideration the view taken by the Madras High Court in *Maridhas v SRS Umari Shankar* and the Apex Court in the judgments (referred to and extracted above) holds that the writ

petitioner as a political party has the locus to file the present writ petition and is a person aggrieved as per Explanation 2 of Section 499 of IPC r/w Section 3(42) of General Clauses Act, 1897. The Petitioner is a distinct entity enjoying constitutional recognition on account of the introduction of the Tenth Schedule in the Indian Constitution. The Petitioner herein fits into the definition of 'person' as per Section 3(42) of General Clauses Act, 1897. This Court opines that the judgments relied upon by the learned Senior Counsel appearing on behalf Respondents No.5, 6 and 7 on the point of locus and maintainability of the present writ petition do not apply to the facts of the present case.

12. Taking into consideration the contents and the clear findings in the report of the Examining Committee dated 01.11.2023 pertaining to reasons for 'Refusal' of Certificate after watching /examining the movie "Vyuham" on 31.10.2023 and also the specific observations made there under in the said report that there is striking resemblance of characters in the film with actual public and political figures/celebrities and

observation and a clear finding that the film is derogatory to few persons and their political parties which is against guidelines 2 (xviii) and duly considering the contents of the 2nd paragraph of email letter (print out) dated 07.11.2023 addressed by the Regional Officer, Central Board of Film Certification, Secunderabad, to the Additional Chief Electoral Officer (which is part of the original record submitted to the Court) wherein it is observed that the film depicts the real incidents that happened in A.P. following death of ex-CM Y.S. Rajasekhar Reddy, including formation of present Government of Sri Y.S. Jagan Mohan Reddy and Skill Development Scam and it presents many political personalities in a defamatory manner and the propaganda material i.e., the Poster, this Court determines that the Petitioner is the person aggrieved.

13) In so far as the plea of the Learned Senior Counsel appearing on behalf of the Respondents No.5 and 6 is concerned that the Petitioner ought to have complained in respect of the film 'Vyuham' which has been certified for public exhibition, to the Board as per Rule 32 of the

Cinematograph (Certification) Rules, 1983 is concerned, which the Petitioner failed to do.

8. This Court answers the said plea as under :

The Division Bench of Apex Court in a judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, referred to Whirlpool Corporation Vs. Registrar of Trade Marks (reported in (1998) 8 SCC 1) and further the said view had been reiterated by a Full Bench of the Apex Court (3 Judges) in a judgment reported in (2021) SCC Online SC page 801 in Magadh Sugar and Energy Limited Vs. State of Bihar and Others dated 24.09.2021 and in the said judgment it is observed as under :

28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High

Court is where an effective alternate remedy is available to the aggrieved person;

- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*
- (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*
- (vii) In cases where there are disputed questions of fact, the High Court may decide to decline*

jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

9. This Court opines that the present case falls under 28(i), 3(a), 3(b), (referred to and extracted above) and hence the plea of the Respondents No.5 and 6 that the Petitioner ought to have complained to the Board under Rule 32 in respect of "Vyuham" film which has been certified for public exhibition is negated.

10. In so far as the plea of the Respondents herein is concerned that there is delay on the part of the Petitioner in approaching the Court, this Court had already answered it in its order dt. 28.12.2023 passed in I.A.No.2 of 2023 in W.P.No.34681 of 2023 at paras 24 and 25 of the said order referring to the judgement of the Division Bench of the Apex Court dt. 21.02.2022 in Writ Petition (Civil) No.1052 of 2021 in Sunil Kumar Rai Vs. State of Bihar reported in (2022) SCC Online 232 and held that delay by its itself cannot be used as a weapon to veto an action under Article 226 when

violation of fundamental rights is clearly at stake. Hence the plea of the counsel for the Respondents No.5 and 6 on the point of delay is negated.

11. In so far as the plea of the Respondents No.5, 6 and 7 are concerned that the letter of Authority was executed in favour of the Petitioner herein on 22.12.2023 and the Writ Petition had been filed on 21.12.2023 and the said letter of Authority had been given by one Mr.Kinjarapu Atchannaidu instead of Mr. Nara Chandrababu Naidu, this Court opines that a curable defect cannot become a fatal ground while adjudication of the writ petition, **this Court opines that a procedural requirement cannot be elevated to such a level that the same would entail that non-compliance is visited by a dismissal of a writ petition.** Jurisdiction of Judicial Review under Article 226 of Constitution of India vested in the High Courts is plenary in the sense that the Court can also su-moto take into cognizance of illegalities and violation of rights perpetrated by public authorities, provided the illegality or violation is brought to the notice of the Court. It is sufficient that

the cause of action of the writ is brought to the notice of the Court by way of an affidavit, for writ court to enquire into the legality or otherwise of the impugned action. The Apex Court in judgment reported in (2006) 1 SCC 75 in Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh & Another at para 17 observed as under :

“Non-compliance with any procedural requirement to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use”.

12. In so far as the plea of the Learned Counsel appearing on behalf of Respondent No.7 that the impact of the movie would be in the State of Andhra Pradesh and not in the State of Telangana and therefore this Court has no jurisdiction to adjudicate the present writ petition is not tenable and rejected as per Article

226(2) of the Constitution of India which reads as under :

“The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”.

13. In the present case the address of the Petitioner is at Road No.2, Banjara Hills, Hyderabad and the impugned Certificate dated 13.12.2023 is issued by the 3rd Respondent who operates from CGO Towers, Kavadiiguda, Secunderabad.

14. In pursuance to the orders of this Court dated 28.12.2023 passed in I.A.No.2 of 2023 in W.P.No.34681 of 2023 the relevant record pertaining to the present impugned proceedings dated 13.12.2023 issued by the 3rd Respondent had been placed before this Court by the learned Senior Counsel i.e., learned Additional Solicitor General of India, appearing on behalf of the

Respondents No.1 to 4 and a bare perusal of the ten Form VIII reports placed on record pertaining to the report of Ten (10) Members of the Revising Committee which had examined and watched the movie on 04.12.2023 "Vyuham" and issued 'U' certification clearly indicates :

15. The Column III as under :

III. Reasons for refusal of certificate or grant of "UA" / "A" / "S" Certificate.

The Column IV as under :

IV. Details of excisions/modifications (please see Notes below :

Sl. No.	Reel No.	Clear specific description of excisions or modifications	Reasons with specific reasons to guidelines
1.			

16. This Court is rather surprised to bring on record that eight out of the said ten Form VIII reports had Column III in blank and one Form VIII report referred to 4 deletions in Column III rather than reasons and in only one Form VIII report it is simply stated in Column III as under :

"EC recommendations were also discussed and unanimous decision was taken for 'U' with deletions".

17. None of the ten (10) Form VIII reports of the ten (10) members of the Revising Committee gave reasons with specific reasons to guidelines as per Column IV of Form VIII.

18. However, the undated examination report which bears no single signature of any of the Members of the Revising Committee referring to the Excisions/Modifications gives reference to the Guidelines which admittedly does not indicate as being part of the original record since all the ten (10) Form VIII reports issued as per Rules 22(9) and 24(9) of the Cinematograph (Certification) Rules, 1983, of all the ten (10) members of the Revising Committee are blank in so far as the column IV, pertaining to reasons with specific reasons to guidelines is concerned and the record does not contain the Examination Report in original.

19. This Court is shocked at the style of functioning of a responsible Expert Body which is bestowed with responsibility as per the Cinematograph Act, 1952 to

deal with (A) a duty of examination and certification of films as suitable for public exhibition, and (B) regulation of cinemas including their licensing.

20. This Court also perused the reports of the Examining Committee i.e., the five Form VIII reports of the Examining Committee dt. 31.10.2023 which had watched/examined the movie "Vyuham" on the said date and also the reasons stated there under in Column III of all the five Form VIII reports and a bare perusal of the same clearly indicates few reasons in the said five Form VIII reports as under :

- (i) that all the characters in the movie are living characters.
- (ii) the film evidences defamation of the characters
- (iii) the movie may cause unrest.
- (iv) movie aims at political interest.
- (v) contempt of court and also prejudice since the Skill Development case is pending in the Court against the National President of the Petitioner herein.

21. This Court in principle agrees with the view of the Apex Court in its catena of judgments that once a

specialised body has reviewed the film in its entirety by taking into consideration the parameters prescribed under the law it is deemed that the film is in accordance with law. But in the present case as borne on record, a bare perusal of the original record clearly indicates that the Specialized Expert Body failed in its duty in reviewing the film in its entirety taking into consideration the parameters prescribed under the law.

RELEVANT PROVISIONS :

22. Section 5B of the Cinematograph Act, 1952, which deals with Principles for Guidance in Certifying Films reads as under :

(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.

23. Rule 22, Clause (8) of the Cinematograph (Certification) Rules, 1983, reads as under :

The Examining Committee shall examine the film having regard to the principles for guidance in certifying films specified in section 5B(1) and the guidelines issued by Government under section 5B(2).

24. Rule 24 of the Cinematograph (Certification) Rules, 1983, Clause (6) reads as under :

The provisions of sub-rule (4) to (8) of Rule 22 shall apply mutatis mutandis to the examination of film by the Revising Committee or the Board.

25. Guidelines issued by the Government of India, Ministry of Information and Broadcasting, New Delhi, dated 06.12.1991, 2(xviii) is extracted hereunder :

“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”.

26. A bare perusal of the above referred provisions clearly indicates that a duty is cast on the Examining Committee and the Revising Committee to ensure that visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented. A bare perusal of Rule 24(6) (referred to and extracted above) clearly indicates that the provisions of sub-rule (4) to (8) of Rule 22 shall apply mutatis-mutandis to the examination of film by the Revising Committee or the Board and a bare perusal of Rule 22(8) further indicates that the Examining Committee shall examine the film having regard to the principles for guidance in certifying films specified in Section 5B(1) and the Guidelines issued by the Government under Section 5B(2) and thus the Revising Committee is

also clearly bound by the provisions of Section 5B and the Guideline 2(xviii).

27. A bare perusal of Rule 24, Clause 9 (referred to and extracted above) clearly indicates that immediately after examination of the film, each member of the Revising Committee shall before leaving the preview theatre record his recommendations in writing in Form VIII set out in the Second Schedule spelling out in clear terms the reasons there for and stating whether he or she consider that the film is suitable for unrestricted public exhibition i.e., fit for 'U' certificate.

28. **Form VIII set out in Second Schedule is extracted here under :**

**FORM VIII
(See Rules 22(9) and 24(9))
CENTRAL BOARD OF FILM CERTIFICATION**

**REPORT OF MEMBER OF EXAMINING/REVISING
COMMITTEE**

N.B. : Please study the guidelines issued by Government once again before you preview the film.

Title of the film and language.....
Colour/Black and White Length of the film
(metres)/Running time (minutes) .

Reels..... Casette Gague
.....

Date of examination..... Name of the
member.....

I. I certify that I have carefully examined the above
film with reference to the guidelines.

I recommend refusal of certificate to the film. OR

I recommend the grant of following certificate
U/UA/A/S with excisions or/and modifications without
excisions or/and, modifications

[Delete whichever is not applicable)

II. In the case of grant of 'S' certificate, please
specify the class or group of persons which should
constitute the specialised audiences-

.....
.....

**III. Reasons for refusal of certificate or grant of
'UA'/'A'/'S' certificate.**

.....
.....

Note.-U-Unrestricted public exhibition.

'UA' - Unrestricted public exhibition with an
endorsement 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 the film should be
considered by the parents or guardian of such child.

'A' - Public exhibition restricted to adults.

'S' - Public exhibition restricted to members of any
profession or any class of persons.

IV. Details of excisions/modifications (Please see notes below)

Sl.	Reel	Clear and specific description of excisions or modifications	Reasons with specific reference to guidelines
-----	------	--	---

V. Thematic classification (only in the case of feature films):-

VI. Any other remarks (including justification for permitting certain visuals and/or words prima facie appear to be objectionable)

VII. I certify that there would be no infraction of the guidelines if the film is granted a certificate as recommended above.

I also certify that the film has been judged in its entirety from the point of view of its overall impact; that the film has been examined in the light of the period depicted in the film and contemporary standards of the country and the people to which the film relates; and that the film does not deprive the morality of the people.

I certify that while recommending the film for unrestricted public exhibition I have satisfied myself that the film is suitable for family viewing, including children.

Signature.....

Notes : 1. While recommending excisions the beginning and end of the excision should be clearly described and the length of the excision may be given as a percentage of the total scene or in meters/feet.

2. If a scene or sequence is to be reduced to a flash, only 1/2 to 1 metre will be kept in the film.

3. Also if certain portions are to be completely deleted while reducing a scene or sequence these should be specified.

29. A bare perusal of Form VIII set out in the Second Schedule extracted above clearly indicates that a duty is cast upon the Revising Committee to examine and ensure that there would be no infraction of the Guidelines if the film is granted a certificate for its release, after watching/examining the movie and judging the same in its entirety from the point of view of its overall impact and thereafter only certify the same for exhibition duly recording and spelling out in clear terms the reasons there for as stipulated under Rule 24, Clause 9 of the Cinematograph (Certification) Rules, 1983.

30. A bare perusal of the report of the Examining Committee dated 01.11.2023 pertaining to reasons for 'Refusal' of Certificate after examining/watching a movie on 31.10.2023 clearly indicates a finding that there is striking resemblance of characters in the film with actual public and political figures/celebrities and a

clear finding that the film is derogatory to few persons and their political parties which is against Guidelines 2(xviii). A bare perusal of the letter dated 07.11.2023 addressed by the Regional Officer, Central Board of Film Certification, Secunderabad, to the Additional Chief Electoral Officer (which is an email print out and finds place in the original record submitted to the Court), indicates the date of screening and certificate refused by examination committee as 31.10.2023 and further the 2nd paragraph of the said email letter dt. 07.11.2023 reads as under :

The film depicts the real incidents happened in AP following death of ex CM YS Rajashekhar Reddy, including formation of present government of Shri Y.S. Jagan Mohan Reddy and Skill Development Scam. It presents many political personalities in a defamatory manner.

31. The excisions that had been carried out which are as under as per the print out of the examination report placed in the original record are as under (the copy of

the original examination report however is not part of the original record submitted to the Court) :

1. Delete the visuals of Director's Disclaimer and insert "based on true events with cinematic liberties".
2. Excise the name "Skilled Development Scam" wherever it appears.
3. Excise the original footage of Godavari Pushkaralu wherever they occur.
4. Excise the liquor brands wherever it appears.
5. Excise the word NTR wherever applicable.
6. Excise the word Mugguru Ammailtho.

32. At para 9 of the Counter Affidavit filed on behalf of the Respondents No.1, 2, 3 and 4 it is stated that the applicant removed/reduced in duration 1 minute 51 second of objectionable content before issuing of Certificate. This Court duly considering the averments made at para 9 of the counter affidavit and also the aforesaid deletions/excisions is of the firm opinion that the aforesaid deletions/excisions admittedly are not sufficiently addressing the conclusive findings of the Examining Committee. The record neither indicates any reasons for differing with the view of the Examining

Committee as expressed in its report dated 01.11.2023 pertaining to reasons for 'Refusal' of Certificate nor indicates any reasons for issuing the impugned certificate dated 13.12.2023 by the 3rd Respondent in favour of the 6th Respondent for theatrical release of the film/movie "Vyuham".

33. Article 19 of the Constitution of India deals with protection of certain rights regarding Freedom of Speech etc., and Article 19(1)(a) indicates that all citizens shall have the right to Freedom of Speech and Expression, Article 19(2) was Amended by the 1st Amendment to the Constitution on 18.06.1951 w.e.f., 26.01.1950 and after the Amendment the new incarnation is as follows :

"19 (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, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 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".

34. The Apex Court in *Subramaian Swamy Vs. Union of India* reported in (2016) 7 SCC 221 held that though Article 19(1)(a) of the Constitution of India gives a fundamental right of speech and expression yet it is circumscribed with certain reasonable restrictions, as the freedom of speech cannot be regarded as so righteous that it would make the reputation of another individual absolutely ephemeral. It is further held that the Court when called upon to decide case of such nature, a balance between the fundamental rights and the reasonable restrictions imposed by the statutory provisions is required to be made in this regard. It is no doubt true that the right to freedom of speech and expression is always regarded not only as a Constitutional Right but a right inhered in every human yet, such right is not absolute as it is circumscribed with reasonable restrictions. It is thus held that the balancing of a fundamental right with the reasonable restriction is an inviolable constitutional necessity. The Apex Court in the said judgment reported in

Subramanian Swamy Vs. Union of India at para 144**observed as under :**

“The aforementioned authorities clearly state that balancing of fundamental rights is a constitutional necessity. It is the duty of the Court to strike a balance so that the values are sustained. The submission is that continuance of criminal defamation under Section 499 IPC is constitutionally inconceivable as it creates a serious dent in the right to freedom of speech and expression. It is urged that to have defamation as a component of criminal law is an anathema to the idea of free speech which is under the Constitution and, therefore, criminalisation of defamation in any form is an unreasonable restriction. We have already held that reputation is an inextricable aspect of right to life under Article 21 of the Constitution and the State is in order to sustain and protect the said reputation of an individual has kept the provision under Section 499 IPC alive as a part of law. The seminal point is permissibility of Criminal defamation as a reasonable restriction as understood under Article 19(2) of the Constitution. To elucidate, the submission is that criminal defamation , a pre-Constitution law is totally alien to the concept of free speech. As stated earlier, the right to reputation is a constituent of Article 21 of the Constitution. It is an individual's fundamental right and, therefore, balancing of fundamental right is imperative. The Court has spoken about synthesis and overlapping of fundamental

rights, and thus, sometimes conflicts between two rights and competing values. In the name of freedom of speech and expression, the right of another cannot be jeopardised.

35. Reputation being an inherent component of Article 21, "Reputation" of one cannot be allowed to be crucified at the altar of the others right of free speech.

36. It has been specifically contended by the Learned Senior Counsel appearing on behalf of the Petitioner that the Petitioner herein had been demeaned and ridiculed through propaganda material, trailers and teasers. Through posters 2 members of the Petitioner party, herein had been projected as buffaloes which is in violation of Section 5B of the Cinematograph Act and Guideline 2(xviii). The same is evident in the report of the Examining Committee dated 01.11.2023 and also in the letter dated 07.11.2023 addressed by the 4th respondent to CEO.

37. The right to preserve ones reputation is acknowledged as a right *in rem* i.e., a right against the entire world. Reputation of an individual is an important

part of ones life. The observations from an American decision in B.F.Marion Vs. Minnie Davis reported in 55 American LR 171 reads as follows :

“The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to enjoyment of life, liberty and property.

38. The Apex Court in the judgment reported in Board of Trustees of the Port of Bombay Vs. Dilip Kumar Raghavendranath Nadkarni reported in (1983) 1 SCC 124 observed that the right to reputation is a facet of Right to Life of a Citizen under Article 21 of the Constitution.

39. The Apex Court in the judgment reported in (2003) 8 SCC 361 in State of Bihar Vs. Lal Krishna Advani & Others at para 6 observed as under :

The International Covenant on Civil and Political Rights, 1965 (ICCPR) recognizing the right to have opinion and the right of freedom of

expression subject to the right of reputation of others. The covenant provides :

- (i) Everyone shall have the right to hold opinions without interference.*
- (ii) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of his choice.*
- (iii) The exercise of the rights provided for in para 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary :*
 - (a) For respect of the rights or reputations of others.*
 - (b) For the protection of national security or of public order (or of public health or morals).*

40. It is thus amply clear that one is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, traverses into

the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter.

41. In "E.P. ROYAPPA v. STATE OF T.N., reported in (1974) 4 SCC page 3, the Apex Court held that an arbitrary State action is violative of Article 14 of the Constitution. Again , in "MANEKA GANDHI v. UNION OF INDIA" reported in (1978) 1 SCC 248, this Court reiterated that the principles of non-arbitrariness pervades Article 14. An administrative action can be tested for constitutional infirmities under Article 14 on four grounds: (i) unreasonableness or irrationality; (ii) illegality; (iii) procedural impropriety, and (iv) proportionality."

42. This Court opines that film makers have no unbridled right to tarnish the image and reputation of any individual or political party or institution. Reputation is the only jewel that cannot be bought and is built over the years and a person who is robbed of it is no less than a destitute.

43. In so far as the request of the Learned Counsel on record appearing on behalf of the Petitioner for a direction to the Respondents No.1 to 4 herein to furnish a copy of the reasons of the Revising Committee in issuing the impugned certificate dated 13.12.2023 by the 3rd Respondent in favour of the 6th Respondent for theatrical release of the film/movie "Vyuham" contrary to the report of the Examining Committee dated 01.11.2023 pertaining to reasons for "Refusal" of Certificate, this Court opines that the said prayer is not even pleaded by the Petitioner in the affidavit filed in support of the present Writ petition, but however, on perusal of the original record this Court does not find any single reason recorded by the 3rd Respondent in issuing the impugned certificate dated 13.12.2023 contrary to the clear findings of the report of the Examining Committee dated 01.11.2023 pertaining to reasons for 'Refusal' of Certificate, since the Form VIII reports set out in the 2nd Schedule of the 10 Members of the Revising Committee which permitted the release of the movie 'Vyuham' by issuing the impugned 'U'

Certificate, referred only to the deletions proposed in the said reports and did not record any single reason for the said deletions and kept Column III of Form VIII dealing with reasons for 'Refusal' of Certificate or grant of 'UA/A/S' certificate blank in so far as 8 Form VIII reports out of 10. It is also borne on record that none of the 10 Form VIII reports of the 10 Member Revising Committee filled up the column reasons with specific reference to guidelines at Column IV of Form VIII reports of the 10 Member Revising Committee leaving the same unanswered in all the 10 Form VIII reports of the 10 Member Revising Committee.

44. In so far as Column III of ten (10) Form VIII reports of the ten (10) member Revising Committee dealing with reasons for 'Refusal' of Certificate or grant of Certificate :-

1. In 8 (eight) Form VIII Reports – Column III is blank.
2. In 1 (one) it reflects as under :
E.C. recommendations were also discussed and unanimous decision was taken for 'U' with deletions.

3. And in one as under :

45. It referred only to the deletions and did not reflect any single reason which words infact are un-understandable to this Court to even extract the same below.

46. Hence as borne on record, on perusal of the original records pertaining to the impugned certificate dated 13.12.2023 issued by 3rd Respondent it is clear and evident as per the Form VIII reports of the 10 Member Revising Committee that no single reason has been recorded by the 10 Member Revising Committee.

CONCLUSION :

47. In so far as the plea of the Respondents No.1 to 7 is concerned that High Court cannot sit in appeal over a decision of an expert body constituted as per the provisions of the Cinematograph Act, 1952, and the Court can only examine the decision making process the same is answered as under:

48. This Court is conscious of the fact that the words “judicial review” as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. It is true that this Court has to confine itself to the question of legality and its concern should be,

TO EXAMINE :-

(I) **Patent illegality i.e., Committed an error of law.**

(II) Breach of Rules of Natural Justice.

(III) Procedural impropriety.

(IV) Irrationality – A decision is vitiated by irrationality when no person acting reasonably could possibly have taken the decision having regard to the material on record.

(V) Whether decision making Authority exceeded its powers and abused its powers.

(I) **Patent illegality.**

49. **This Court opines in the present case there is patent illegality or apparent error. The error apparent as borne on record, on the face of the decision itself is the failure to comply with the procedure stipulated**

under Rule 24(9) of Cinematograph (Certification) Rules, 1983. On perusal of the original record it is evident that none of the Form VIII reports set out in the second schedule of all the 10 Member Revising Committee indicate one single reason, which apparently is a patent illegality and an evident error apparent on the face of the impugned decision, which goes into the root of the impugned decision dated 13.12.2023 of the 3rd Respondent herein and vitiates the very decision making process itself. The Examining Committee after watching the movie "Vyuham" on 30.10.2023 recorded few specific reasons and unanimously decided to refuse certificate to the film vide its report dated 01.11.2023 with the specific observations there under in the said report that there is striking resemblance of characters in the film with actual public and political figures/ celebrities and the observation and finding that the film is derogatory to few persons and their political parties which is against Guidelines 2(xviii).

50. As already discussed at paras 29 to 32 and at 43 to 46 of the present judgment to explain the patent

illegality and error of law committed by respondents 3 and 4 herein it is reiterated here again that the 10 Member Revising Committee after watching the movie "Vyuham" on 04.12.2023 did not record one single reason as mandated under Rule 24(9) of the Cinematograph (Certification) Rules, 1983 in any of the 10 Form VIII Reports set out in the 2nd Schedule and the 3rd Respondent proceeded and issued Certificate No.DIL/1/45/2023-Hyderabad, dated 13.12.2023 in favour of the 6th Respondent for theatrical release of the film/movie "Vyuham", contrary to the clear findings in the report of the Examining Committee dated 01.11.2023 pertaining to reasons for refusal of certificate after watching/examining the movie "Vyuham" on 31.10.2023, since the original record does not indicate one single reason except stating EC recommendations were also discussed and unanimous decision was taken for 'U' with deletions in clear violation of Rule 24(9) of the Cinematograph (Certification) Rules, 1983. A bare perusal of the Rule 24(9) of the Cinematograph (Certification) Rules, 1983,

clearly indicates that immediately after examination of the film each member of the Revising Committee before leaving the preview theatre record his/her recommendations in writing in Form VIII set out in the 2nd schedule spelling out in clear terms the reasons therefor whether he/she consider that the film is suitable for unrestricted public exhibition i.e., fit for 'U' certificate which exercise as borne on record does not reflect in the original records.

51. Reason is the soul of justice, reason is the heart beat of every conclusion, recording of reasons is principles of natural justice as it ensures transparency and fairness in decision making. This Court as explained above opines that the 3rd and 4th Respondents herein committed an error of law which is a patent illegality in the decision making process itself.

52. Few Judgments of the Apex Court on the point of recording of reasons.

a. **The Apex Court in the judgment reported in (2001) 5 SCC 664 in Tandon Brothers Vs. State of West Bengal & Others at para 34 observed as under :**

“Governmental action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the State of Law – if the action is otherwise or runs counter to the same the action cannot be ascribed to be malafide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity, good conscience and justice. Justice of the situation demands action clothed with bonafide reason and necessities of the situation in accordance with the law.”

b. **The Apex Court in the judgment reported in (2010) 9 SCC 496 in Kranti Associates Private Limited & Another v. Masood Ahmed Khan & Others at para 47 observed as under :**

Para 47 : *Summarising the above discussion, this Court holds:*

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

(d) *Recording of reasons also operates as a valid restraint on any * possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

(e) *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*

(f) *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

(g) *Reasons facilitate the process of judicial review by superior courts.*

(h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

(i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making,

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons, for the decision is of the essence and is virtually a part of "due process".

c. The Supreme Court in case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji reported in (1951) SCC 1088 observed as under :

“We are clear that the public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the Officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting’s and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

d. Former Chief Justice of India, Late Justice Y.V. Chandrachud in judgment reported in (1978) 1 SCC 248 in Menaka Gandhi Vs. Union of India held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny.

e. The Apex Court in case of Steel Authority of India Limited Vs. Sales Tax Officer, Rourkela-I Circle, AIR 2009 Supplement SC 561 observed as under :

“Reason is the heart beat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless”.

f. In Alexander Machinery (Dudley Limited) Vs. Crabtree reported in (1974) ICR 120 (NIRC) it was observed

“Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “Inscrutable face of the sphinx” it can, by its silence, render it virtually impossible for the Courts to perform their Appellate function or exercise the power of judicial review in adjudging the validity of the decision.”

g. The Apex Court in judgment reported in (2010) 3 SCC 732 in Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity & Others at para 41 observed as under :

“Reason is the heart beat of every conclusion, it introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order unsustainable particularly when the order is subject to further challenge before a higher forum”.

(II) Breach of Principles of Natural Justice.

53. This Court opines that the Respondents No.1 to 4 herein ignored the complaints/representations of the Petitioner to CBFC, through which the Petitioner herein made a specific request not to certify the subject film as it contains defamatory content even as per the clear findings of the Examining Committee as per its report dated 01.11.2023, having rejected its screening on 31.10.2023 after examining/watching the said movie on 31.10.2023, but however, in the counter affidavit at para 12 it is stated that the representation of the Petitioner dated 30.10.2023 and 04.11.2023 was kept before the Revising Committee and the Revising Committee has taken due cognizance of the representation as well as the report of the Examining Committee before issuing the impugned certificate dated 13.12.2023 by the 3rd Respondent herein.

54. A bare perusal of the original record indicates the receipt of the representations/complaints of the Petitioner herein by the Respondents herein, but

however, admittedly the Petitioner was not provided an opportunity to have Petitioner's say in the matter. The original record pertaining to the impugned proceedings dated 13.12.2023, neither refers to the representations of the Petitioner nor records any reasons or any discussion evidencing consideration of Petitioner's representations nor the report of the Examining Committee dated 01.11.2023 and therefore it is clear that the averments made at para 12 of the counter affidavit filed by Respondents No.1 to 4 herein are factually incorrect.

55. This Court opines that violation of principles of natural justice will have to bear the scrutiny of judicial review.

A) The Apex Court in the judgment reported in (2007) 3 Supreme Court Cases 587 in "State of Maharashtra v. Public Concern for Governance Trust" held that a decision taken by any authority affecting the right to reputation of an individual has civil consequences. Therefore, in such situations the principles of natural justice would come into play. The

Court held that any order or decision of the authority adversely affecting the personal reputation of an individual must be taken after following the principles of natural justice : (SCC p.606, para 41) observed as under :

“41. It is thus amply clear that one is entitled to have and preserve one’s reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels, into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.”

B. This Court opines that fairness in action requires that procedures which permit impairment of Fundamental Rights ought to be just, fair and reasonable.

C) The Apex Court in the judgment reported in (2023) 6 SCC 1 in State Bank of India & Ors., Vs. Rajesh Agarwal & Ors., at para 85 observed as under :

A Constitution Bench of this Court in *Union of India and Anr. Vs. Tulsiram Patel and Ors.* has categorically held that violation of the principles of natural justice is a violation of Article 14.

The Court held that any State action in breach of natural justice implicates a violation of Article 14: (SCC p. 476, para 95)

"95. The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice.

What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body or men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter.

In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

D) In "MANGILAL V. STATE OF M.P., reported in (2004) 2 SCC page 447, a two-Judge Bench of Apex Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial rights of parties are affected: (SCC pp.453-54, para 10) observed as under:

"10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or

stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves."

(III) Procedural Impropriety :

56. It is settled law when a statute describes or requires a thing to be done in a particular manner it should be done in that manner or not at all.

A) (M.Shankara Reddy Vs. Amara Ramakoteswara Rao reported in (2017) SCC Online Hyd 426).

B) The Division Bench of Apex Court in its judgment dated 04.10.2021 in Supertech Ltd., Vs. Emerald Court Owner Resident Welfare Association and Ors., reported in 2021 SCC Online SC 3422, referring to Taylor Vs. Taylor, 1875 (1) Ch D426, Nazir Ahmed Vs. King Emperor reported in (1936) L.R.63 Ind Ap372 and Parbhani Transport Co-operative Society Ltd., Vs. The Regional Transport Authority, Aurangabad & Ors., reported in AIR 1960 SC 801 at para 13 observed as under :

“It is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. Hence when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden. This Court

too, as adopted this maxim. This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way.

In the present case, the procedure laid down under the statute has been totally ignored by the Revising Committee.

(IV) Irrationality

C) This Court opines that a decision is vitiated by irrationality when no person acting reasonably could possibly have taken the decision having regard to the material on record.

57. This Court opines that the 3rd and 4th Respondent herein irrationally without appreciating the material on record issued the impugned certificate dated 13.12.2023, contrary to the report of the 5-Member Examining Committee dated 01.11.2023 and also contrary to paragraph 2 of the letter dated 07.11.2023 addressed by the Regional Officer, Central Board of Film Certification, Secunderabad, to the Additional Chief Electoral Officer, Telangana, Hyderabad, in clear

violation of Rules 22(8) 24(6), 24(9) of the Cinematograph (Certification) Rules, 1983, and Section 5B of the Cinematograph Act, 1952, Guidelines 2(xviii) issued by the Government of India, Ministry of Broadcasting, New Delhi, dated 06.12.1991 and committed a serious error of law and a serious deficiency in the decision making process itself which is irrational and unwarranted.

(V) Whether decision making Authority exceeded its powers and abused its powers.

In view of the explanation above, this Court opines that the decision making Authority exceeded its powers and abused its powers.

58. The principle enunciated in "Rex Vs. Electricity Commissioners" (1924) 1 K.B.171 by Atkin L.J. applies to this case. Atkin L.J. laid down the following test :

"..... wherever any body of persons having legal authority to determine questions affecting the rights of the subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of

the Kings Bench Division exercised in these writs".

59. This Court opines that the decision making Authority as borne on record has not applied its mind and the 3rd Respondent proceeded and issued the impugned certificate dated 13.12.2023 irrationally, exceeding its powers in clear abuse of its powers contrary to Rules 22(8), 24(6), Rule 24(9), Section 5B and Guideline 2(xviii).

60. This Court opines that judicial review of a decision making process under Article 226 must be available "to remedy injustice wherever it is found and technicalities should not come in the way of granting that relief under Article 226 of the Constitution of India". Any action without reasons is nonest in law and it is now well settled that any decision be it executive, administrative or quasi-judicial is amenable to the power of judicial review of the writ court under Article 226 of the Constitution of India when such decision has adverse civil consequences. In the present case there is a serious deficiency in the decision making process itself,

since a bare perusal of the original records pertaining to the order impugned dated 13.12.2023 issued by the 3rd Respondent clearly indicates that there is a serious flaw, a patent illegality, procedural impropriety, irrationality and a breach of the rules of natural justice in the decision making process itself by the Expert Body as explained above and hence under these circumstances this Court opines that the judgements relied upon by the Learned Counsel appearing on behalf of the Respondents 1 to 7 have no application to the facts of the present case and this Court is constrained to reject the plea put forth by the Learned Counsel appearing on behalf of Respondents No.1 to 7 that the decision making process is in conformity with law and that the Expert Body empowered under the Act had examined the movie "Vyuham" and found the same as not defamatory, since admittedly as borne on record the decision making process is not in conformity with law and is in fact contrary to law to law since the findings of the Examining Committee made in its Report dated 01.11.2023 had not been addressed by the Revision

Committee at all and there has been no objective consideration by the 3rd respondent while issuing the impugned certificate dated 13.12.2023. In the present case as borne on record, a bare perusal of the original record clearly indicates that the specialized expert body failed in its duty in reviewing the film in its entirety taking into consideration the parameters prescribed under the law.

61. In the light of the above discussion and duly considering the view of the Apex Court and other High Courts in the various judgments referred to and extracted above in the present order by this Court, and also the view taken in the various judgments relied upon by the Learned Counsel on record appearing on behalf of the Petitioner (referred to and extracted above) and duly considering the submissions put-forth by all the learned counsel appearing on behalf of the Petitioner and Respondents No.1 to 7 and duly taking into consideration the facts and circumstances of the present case and on perusal of the original records pertaining to the subject issue, this Court opines that

the Petitioner is entitled for the relief as prayed for in the present writ petition.

62. For all the reasons stated above the Writ Petition is allowed as prayed for and the impugned Certificate No.DIL/1/45/2023-HYD, dated 13.12.2023 issued by the 3rd Respondent in favour of the 6th Respondent for theatrical release of the film/movie "Vyuham" is quashed and the matter is remitted to the 3rd and 4th Respondents for reconsideration of the subject issue afresh, in accordance to law, in conformity with principles of natural justice strictly adhering to the relevant provisions of the Cinematograph Act, 1952 and the relevant Cinematograph (Certification) Rules, 1983, read with Section 4 of the Cinematograph Act, 1952, within a period of 3 weeks from the date of receipt of the copy of the order and duly communicate the decision to all concerned pertaining to the certification of the film "Vyuham". However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 22.01.2024

Note: L.R. copy to be marked

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Issue c.c today.

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