



Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8071 OF 2024

Azhar Basha Tamboli ...Petitioner
Versus
Ravi S Gupta & Ors ...Respondents

Mr Mayur Khandeparkar, *with Aneesa Cheema, i/b Rekha Musale, for the Petitioner.*
Mr Rahul Narichania, *Senior Advocate, with Siddharth Thacker & Sunilkumar V Neelambaran, i/b Mulla & Mulla & Craigie Blunt & Caroe,, for Respondents Nos. 1 to 6.*
Mr Advait Sethna, *with P Roychoudhary, for Respondents Nos. 7, 8 and 14.*
Ms Kavita N Solunke, *AGP, for the Respondent-State.*

CORAM Kamal Khata & Rajesh S Patil, JJ.
DATED: 7th June 2024

PC:-

1. Today's hearing was fixed for considering the comments of the panel that was directed to be formed by the CBFC by our order yesterday, 6th June 2024 as well as to pass such further orders as would be necessary.
2. Mr Narichania for Respondents Nos. 1 to 6 has tendered an Affidavit. That is taken on record.

ASHWINI
H
GAJAKOSH

Digitally
signed by
ASHWINI H
GAJAKOSH
Date:
2024.06.07
21:41:15
+0530

3. Mr Sethna for Respondents Nos. 7, 8 and 14 has tendered the report of the committee, formed pursuant to orders dated 5th June 2024 and 6th June 2024, which is taken on record and marked 'X' for identification with today's date.

4. Having perused the report, we are at pains to observe that the purpose and intent with which the committee was formed and called upon to give its comments is completely frustrated. The purpose of forming the committee was that the film would be viewed by a set of three individuals who would give an uninfluenced opinion along with reasons as required under Rule 23 sub clause 11 of the provisions of the Cinematography (Certification) Rules, 2024 ("**Cinematograph Rules**").

5. Instead of giving their comments the report of the committee states and we quote for clarity as under:

"6. It emphasizes the importance of careful consideration to ensure that all aspects are meticulously reviewed. The committee aims to provide a well-reasoned and comprehensive response, which requires an in-depth analysis of the issues presented. Therefore, the Committee is requesting an extension of time to submit its comments, at least till Wednesday, ie June 12, 2024, to ensure that the final decision is both thoughtful and informed. This additional time will allow them to engage in detailed discussions, consult relevant experts, and consider all relevant factors."

6. These comments were certainly not what we asked for. The order is amply clear.

7. Mr Sethna accepts that the order passed by this Bench was unambiguous. He accepts that it is not that the intention of the Court was not understood by all those Advocates who appeared before this Court yesterday. He submits that he had also given clear instructions to all concerned as to what was required by the Court from the committee. Despite these instructions the committee has chosen to seek time. This is totally unacceptable. The committee had clearly failed to carry out the obligations that it voluntarily undertaken to do.

8. Be that as it may, Mr Narichania submits that only with a view to continue the exhibition of the movie after having taken specific instructions from his clients who are present in Court the Respondents Nos 1 to 6 were willing to delete the dialogues in the film that are mentioned at paragraph (I) of sub paragraphs (ix) and (x) at page 17. For clarity the paragraph (I) (ix) and (x) are extracted hereinbelow:

“(I) That the trailer of the said film is an incorrect depiction and distorted interpretation of the Quran which is detailed below:

“(ix) शोहरमजाजे खुदा और मजाजे खुदा के खिलाफ जाना कुफ्र है, कुफ्र की सजा है मौत.”

“going against the husband is “KUFR & the punishment for Kufr is death.”

(x) “औरते शलवार के नाड़े की तरह होने चाहिए, जब तक अंदर रहेंगी बहतर रहेंगी . . नारे- ए- तकबीर . . अल्लाहहूअकबर’.

“Muslim women should be like the knot of the Salwar, as long as they stays inside it will be better.”

9. Mr Narichania submits that this deletion is only being done since the movie is being released today and with a view to prevent a substantial loss that would be caused to Respondents Nos. 1 to 6 on account of delay. It is clarified that the Respondents Nos 1 to 6 clearly unambiguously and totally disagree with the contentions in the Petition and interpretations particularly mentioned in paragraph (I) of sub paragraphs (ix) and (x) extracted hereinabove. It is clarified that the deletions are carried out without prejudice to the rights and contentions of Respondents Nos. 1 to 6.

10. It is further clarified by Mr Narichania that the dialogues in paragraph (I) (i) and (ii) at page 16 and (I) (vi) (vii) and (viii) at page 17 have been deleted and are not in the movie.

11. On the aforesaid submission Mr Sethna points out that as per the Rule 31 and more particularly sub clause (iv) and (v) of the Cinematograph (Certification) Rules, 2024 (“**Cinematograph Rules**”) the CBFC would require to grant the fresh certification. He points out that if such deletion as suggested by the Respondents Nos 1 to 6 is made, as per the Cinematograph Rules the exhibition of the film cannot be permitted since the certification by the committee is pending.

12. Mr Khandeparkar now takes this technical objection relying on Rule 31(4) the Cinematograph Rules to submit that the movie exhibition of the movie should be restrained.

13. Having heard all the learned counsel at some length and considering the peculiar facts and circumstances of the case the manner in which this matter has unfolded we are of the view that it would severely prejudice the Respondents Nos 1 to 6 if the exhibition of the film permitted yesterday is prohibited.

14. We find equities are clearly in favour of the Respondent Nos 1 to 6. We are conscious of the fact that the Petitioner is an individual who has come to Court by this Writ Petition. We have not examined the question of his locus as stated in our order of 5th June 2024. As an interim measure we also directed a committee to view the movie and give their comments. Unforgivably, they have failed to comment. With a view to dilute the controversy the Respondents Nos 1 to 6 have volunteered to delete the dialogues (stated above).

15. We disagree with Mr Khandeparkar that on the ground for want of issuance of the certificate the film should be restrained from being exhibited. We are of the view that if an individual such as in this Petition is permitted to stall the release of movies which have been duly certified by the CBFC it would encourage holding film producers to ransom. The Apex Court in the case of *Prakash Jha Productions and Another vs Union of India and others*¹ has held that once an expert body has found that the film could be screened all

1 (2011) 8 SCC 372

over the country an opinion of the High Level Committee or any high-level expert committee of the State would have no power as the same is not available to them. This Court in the case of *Priya Singh Paul vs Madhur Bhandarkar and Others*² held that the Censor Board ultimately is the authority to deal with such effect of film on the society, even in cases stated to be hurting sentiments in some situations.

16. Considering all the aforesaid circumstances, we deem it fit to pass the following order:

- (a) The Respondents Nos. 1 to 6 have agreed to delete these dialogues as stated by Mr Narichania from the film that would be released in all theatres and on all platforms on which it has been released by them. That would be deleted by the end of the day today.
- (b) Since it is submitted by Mr Narichania that this entire process is likely to take at least six to seven hours, considering the exigencies and the deletion to be carried out pan India we grant them time till the end of the day today to delete all the necessary portions.
- (c) It is hereby clarified that all the shows from tomorrow i.e. on 8th June 2024 shall exhibit the new version of the film after due deletion of portions as stated by Mr Narichania hereinabove.

2 2017 (6) Mh. L.J 957

- (d) Upon the due deletion of the aforestated portions the Respondents Nos. 1 to 6 shall make an application to CBFC Delhi in accordance with the rules.
- (e) CBFC will certify and reissue the certificate. Mr Sethna submits that though the entire process is online in the peculiar circumstances of this matter as an exception is carved out and the reissuance of the certificate would be done by the end of the day today, i.e., 7th June 2024 and certification shall be communicated to Respondents Nos. 1 to 6 forthwith.
- (f) It is clarified that mere non-exhibition of the reissued certificate would not prevent the exhibition of the new version of the film tomorrow, i.e., on 8th June 2024.

17. We have passed the aforesaid order in the peculiar facts and circumstances of the case and to balance all equities as far as possible.

18. It is clarified that the aforestated deletion is being voluntarily done by Respondents Nos. 1 to 6 and is not to be construed as being done under the orders of this Court.

19. It is further clarified that this order shall not be cited or be considered as a precedent for any other matter, as the order passed today in the present proceedings is taking into consideration the facts of the proceedings as pointed out to us.

- 20.** All contentions are expressly kept open.
- 21.** This is only an interim order.
- 22.** List the matter on 13th June 2024.
- 23.** All parties to act on an authenticated copy of this order.

(Rajesh S Patil, J)

(Kamal Khata, J)