

BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL

28th March, 2018

Appeal No. 3/2018

Present: CHIEF JUSTICE(RETD.) MANMOHAN SARIN, CHAIRPERSON, FCAT

MS. POONAM DHILLON, MEMBER, FCAT

MS. SHAZIA ILMI, MEMBER, FCAT

**FOR THE APPELLANT: Mr. Sanju S. Unnithan(Producer)
Mr. Joseph P. Alex (Advocate)
Mr. Jubith Namradath (Director)**

**FOR THE RESPONDENT: Dr. Prathibha A. Regional Officer, CBFC
Thiruvananthapuram**

IN THE MATTER OF:

SANJU. S. UNNITHAN

.....

APPELLANT

VERSUS

**CENTRAL BOARD OF FILM
CERTIFICATION(CBFC),
TIRUVALLUM,
THIRUVANANTHPURAM**

.....

RESPONDENT

APPEAL UNDER SECTION 5C OF THE CINEMATOGRAPH ACT, 1952 (37 OF 1952) AGAINST THE DECISION OF CENTRAL BOARD OF FILM CERTIFICATION (CBFC) IN RESPECT OF MALAYALAM FILM "AABHAASAM".

ORDER

The Appellant on 10th December, 2017 applied for grant of Certification for exhibiting the Malayalam Film "Aabhaasam" under the Cinematograph Act. The CBFC Thiruvananthapuram vide order dated 4th January 2018, found the film as not suitable for unrestricted public exhibition. It held that the film may be suitable for public exhibition restricted to adults subject to carrying out the under mentioned excisions and cuts. The reasons given for grant of 'A' Certificate with cuts as specified are given herein after:-

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The Examining Committee unanimously felt that the visuals and content of the film deals with violence, use of abusive language, smoking, drinking, obscene gestures, References to Shiv Sena, Mahatma Gandhi etc. which are derogatory in nature, use of drugs by women etc. which can be seen by Adult audiences only, hence recommended for grant of A certificate.

Cut No.	Insertions/Excisions/ Modification	Location	Cut Description	Guidelines
1.	Excisions	WHEREVER IT OCCURS	DELETE THE WORD 'MAIRE'	2(ix)
2.	Excisions	REEL NO. 1	DELETE THE DIALOGUE ON MAHATHMA GANDHI "ITHU MOTHAM KARAYALLE.ETHRA THUDACHALUM VELUKKILLA" & "KIDAKKANA KIDAPPU KANDILLE.. GANDHIYANATHRE GANDHI"	2(ix)
3.	Excisions	WHEREVER IT OCCURS	DELETE THE BRAND NAME OF ALCOHOL	2(v)
4.	Excisions	REEL NO. 5	DELTE THE DIALOGUE ACCORDING TO SREE NARAYANA GURU, IN INDIA ONE PERSON, ONE RELIGION	2(xiii)

Theme, language, visuals and overall treatment suitable for adult only.

2. The Appellant aggrieved by the order of the CBFC filed an appeal on 10th February, 2018 before the Revising Committee of CBFC. The Revising Committee viewed the film and after consideration of the submissions of the Appellant vide order dated 14th February, 2018 upheld the conclusion of the Examining Committee that the Film was not suitable for unrestricted public exhibition but may be suitable for public exhibition restricted to adults. It gave under mentioned reasons for grant of A certificate to the film subject to excisions:-

The central theme of the film revolves around a travel agency called 'Democracy Travels', which plied 5 buses with names like 'Gandhi', 'Godse', 'Ambedkar', 'Jinnah' and 'Marx'. In the context of narrative of the film, which is the prime reason for certification, the names such as 'Gandhi', 'Godse', 'Ambedkar', 'Jinnah' and 'Marx' looked unfounded and lend themselves to provocative narratives in dialogues such as *everyone is running away from Godse and going to Gandhi right now*. These names were used on purpose and had a socio-political tangent to it. Callous words of objectification like 'Chinkis', 'Gharvapsi' 'Shiv Sena' etc. were also found to be out of context in the narrative of the film. Names of living political figures like Oommen Chandy, former Chief

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Minister of Kerala were also used unnecessarily. Overall theme, treatment and presentation of the film found to be suitable for adult audiences.

Sr. No.	Insertions/Excisions	Location	Description of Excisions/Modification	Guidelines
1.	Modification	Gen	Delete the words Shiv Sena, Maharashtra, Oomen Chandy, Godse, Jinnah, Gandhi, Chinkis, Ambedkar, Gharvapsi, Jio wherever it occurs as it can be construed defamatory.	2(xix)
2.	Excisions	Gen	Delete the visuals of the guy touching crotch.	2(viii)
3.	Insertion	00	Insert smoking static message wherever smoking scene appears.	2(vii)

3. Dissatisfied by the decisions of the Examining Committee as well as of the Revising Committee of CBFC granting 'A' Certification with cuts, the Appellant has filed the present appeal before this Tribunal.

4. The Appellant in the grounds of the appeal, and its counsel during oral submissions assailed the findings and approach of the Examining Committee and Revising Committee of the CBFC.

It is submitted that there are no elements and ingredients which warranted adult categorization being awarded to the film. The Examining Committee and Revising Committee of CBFC had failed to appreciate that the story of the movie revolves around a travel agency named "Democracy Travels". The travel agency runs 5 buses named Gandhi, Godse, Ambedkar, Jinnah and Marx. It captures the behavior, reaction of ordinary people traveling by bus and their reactions are on mundane things, which they come across as well as their views during travel. It seeks to portray their character as depicted in interaction with others during the journey.

5. Learned Counsel for the Appellant submitted that there could not be a prohibition or restraint on the name of the either the travel agency or that of buses. It would otherwise amount to a fetter on the freedom of expression and curbing artistic and creative expression of thoughts and views. The Appellant also claimed that sufficient opportunity was not granted to them to put forward their view point.

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6. We have noted the Appellant's submission as made before the Examining Committee and Revising Committee. Let us now examine whether the references in the movie to Mahatma Gandhi, Shiv Sena and other leaders and personalities over whom the buses are named can be regarded as *per se* defamatory/derogatory or whether the film and its dialogue are provocative narratives or not? Further, whether the used words such as Chininkis, Gharvapsi, Shiv Sena etc. were found out of context of the narrative and the references to the Former Chief Minister of Kerala was unnecessary.

7. For a proper appreciation of the matter in controversy and to put the same in the right perspective, it would be worthwhile to quote from the Judgment of a Learned Single Judge of the High Court of Delhi in *Manu Kumaran & ANR. v. CBFC and another*, where in the Learned Judge has summarized legal principles emerging from judicial pronouncements with regard to Certification of Films involving creative and artistic expression of freedom of speech vis-à-vis the resolution flowing from statutory guidelines.

- i. *Films are regarded as constituting a powerful medium of expression.*
- ii. *Artists, writers, play rights and filmmakers are the eyes and the ears of a free society. They are the veritable lungs of a free society because the power of their medium imparts a breath of fresh air into the drudgery of daily existence.*
- iii. *Their right to communicate idea in a medium of their choosing is as fundamental as the right of any other citizen to speak.*
- iv. *Our Constitutional democracy guarantees the right of free speech and that right is not conditional upon the expression of views, which may be palatable to mainstream thought. Dissent is the quintessence of democracy. Hence, those who express views, which are critical of prevailing social reality, have a valued position in the constitutional order.*
- v. *Dissent in all walks of life contributes to the evolution of society. Those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon.*
- vi. *Films, which deal with controversial issues necessarily, have to portray what is controversial.*
- vii. *The director has available to him all the tolls of trade. Satire, humor and the ability to shock each one out of the mundane levels of existence is what embellishes are forms.*
- viii. *The Constitution protects the right of the artist to portray social reality in all its forms. Some of that portrayal may take the form of questioning values and mores that are prevalent in society. The power of literature lies in the ability of the writer to criticize commonly held beliefs and ordinary human foibles. Equally, a writer, producer and director of a film have the discretion to depict the horrors of social reality.*

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- ix. *It is impermissible ground to reject the certification of a film on the ground that certain characters and incidents are identifiable with actual personalities and individuals. The protection of the constitution does not extend only to fictional depictions of artistic themes. Artist, filmmakers and play rights are affirmatively entitled to allude to incidents, which have taken place, and to present a version of those incidents, which according to them represents a balanced portrayal of social reality. No democracy can countenance a lid of suppression on events in society.*
- x. *Stability in society can only be promoted by introspection into social reality, however grim it be.*
- xi. *The constitutional protection under Article 19(1)(a) that a filmmaker enjoys is not conditioned on the premise that he must depict something, which is not true to life. The choice is entirely his. Those who hold important positions must have shoulders, which are broad enough to accept with grace a critique of themselves, critical appraisal is the cornerstone of democracy and the power of the film as a medium of expression lies in its ability to contribute to that appraisal.*
- xii. *No film that extols the social evil or encourages it is permissible, but film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil.*
- xiii. *[The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good.*
- xiv. *The requirements of art and literature include within themselves- a comprehensive view of social life and not only in its ideal form and the line are to be drawn where the average man moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, it cannot be helped.*
- xv. *Ideas having redeeming social or artistic value must also have importance and protection for their growth. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censors scissors.]*
- xvi. *[Once the test is that the work must be seen as a whole and viewed in entirety, then, it will not be permissible to pick and choose isolated scenes or events or characters. It will not be permissible to pick up some lines from some scenes and few dialogues and read them out of context.*
- xvii. *It is open to a creative person to choose a particular setting and backdrop and move his story forward with due regard to the same. It is entirely for him to chose the underlying theme and story line. The creative freedom envisages presentation of certain works as per the choice of the maker or writer. None can*

dictate to him as to how he should produce or make his film and what should be the contents thereof.]

- xviii. *[Too much need not, we think, be made of a few swear words the like of which can be heard every day in every city town and village street. NO adult would be tempted to use them because they are used in this film.*
- xix. *Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene*

8. Reference may also be usefully to make the Judgment of the Division Bench of the High Court of Bombay in *F.A. Picture International v. Central Board of Film Certification, Mumbai and Another Parallel citation(s) : 2005 KHC 5196 : AIR 2005 Bom. 145*, where the Hon. Justice Dr. D.Y. Chnadrachud, J. has given primacy to the freedom of the speech and expression and also decried the action of Certifying Authority in rejecting the films on ground that it had characters which were having resemblance to real life personalities.

9. After having viewed the film and considering the submissions made by the Appellant, as well as the principles laid down in *Manu Kumaran & ANR v. CBFC(supra)* and *F.A. Picture International v. CBFC Mumbai & another(supra)*, we are of the view that both the Examining Committee and the Revising Committee have failed to appreciate the theme of the movie and the social satire, it seeks to project by showing real life reactions of common man as they surface during the bus journey, when they are put together. Their individual reaction views on various subjects, matters of common interest provided good opportunities to the Appellants and the maker of the films to make out a film with social satire.

10. There is hardly anything abusive or use of cuss words in the film. There is no obscene or depiction of sexuality which could deprave the young adolescent minds. In these circumstances we are of the view that the movie deserves to be granted 'UA' Certification with certain cuts, which are discussed hereinafter.

11. Let us now consider the impugned order as passed by the Revising Committee in which the order of the CBFC would merge. The first excision and modification directed by the Revising Committee is deletion of the following names Shiv Sena, Maharashtra, Oomen Chandy, Godse, Jinah, Gandhi, Chinkis, Ambedkar, Gharvapsi, Jio wherever it occurs as it can be construed defamatory.

We find the reference to the name Shiv Sena, Oomen Chandy, Chinkis appear in the background and circumstances, where the same are totally innocuous. No, conclusion or inference regarding their being derogatory or defamatory can be drawn therefrom. Besides we also do not find any contravention of the National **(Emblems and Names Prevention of Improper Use) Act, 1950.**

12. Coming to the second cut recommended by the Revising Committee namely delete the visuals of Drunk guy touching crotch. We are of the view that the said cut is justified and the scene deserves to be cut. Similarly, the statutory warning regarding smoking deserves to be prominently shown wherever the smoking scene appears.

Ordered accordingly,


We restore the cut as directed by Examining Committee regarding the deletion of the word/abuse 'Maire', wherever it occurs.

The above cuts were brought to the attention of the Appellant during the course of hearing and who has given consent to the three cuts namely.

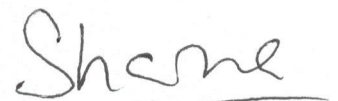
1. Drunk guy touching crotch.
2. Deletion of the abusive word 'Maire'
3. Inclusion of prominent disclaimer regarding 'Smoking being injurious to health'

13. In exercise of the inherent power under Section 5(11) of the Act, we direct that the dialogue and scene containing reference to Gandhiji by the cleaner of the bus and the reference to their being dark spots which cannot be washed out from the Glass which has Gandhiji appearing in 00:04:15:10 to 00:04:15:15 be deleted.


14. In the result, the impugned orders of CBFC Examining Committee and the Revising Committee are set aside. We direct issuance of 'UA' Certification with parental caution with cuts and excisions as directed in Para-12.



(POONAM DHILLON)
MEMBER, FCAT



(SHAZIA ILMI),
MEMBER, FCAT



(CHIEF JUSTICE (RETD.) MANMOHAN SARIN)
CHAIRPERSON(FCAT)