

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th September, 2014.

+ **W.P.(C) No.6053/2014**

NANDINI TEWARI & ANR **Petitioners**

Through: Mr. Abhishek Krishna, Adv.

Versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Sanjay Jain, ASG with Mr. Jasmeet Singh, Ms. Kritika and Ms. Pallavi Shali, Adv.
Mr. Sidharth Chopra and Ms. Sneha Jain, Adv. for Fox Star Studios India Pvt. Ltd.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India filed as a Public Interest Litigation (PIL) seeks a direction to the respondents Union of India and Ministry of Information and Broadcasting and the private respondents “not to release the movie ‘Finding Fanny’ on 12th September, 2014” and a further direction to the private respondents, being the Director and Producer of the said film, to delete the word ‘Fanny’ from everywhere it appears in the film including from the posters and banners of the film, on

the ground that the dictionary meaning of the word 'fanny' is 'woman's genitals' and the use of the word 'Fanny' in the film will hurt the feelings of citizens of India especially immature brain of minor children.

2. We have heard the counsel for the petitioners and the learned ASG appearing on advance notice.

3. The petitioners, in support of the ground on which the reliefs are sought, rely on the meaning of the word 'fanny' in New Concise Oxford English Dictionary, Indian Edition as "British vulgar slang for a woman's genitals". However, the same Dictionary also gives the meaning understood of the said word informally in Britain (i.e. not in slang) as "mess around and waste time" and informally in America as "a person's buttocks". The petitioners also rely on the Chambers 21st Century Dictionary and The Free Dictionary by Farlex and which give the same meaning as in the Oxford Dictionary. Alas! No Indian meaning is given.

4. A perusal of the Shorter Oxford English Dictionary, Sixth Edition disclosed the origin of the said word, perhaps from female name 'Fanny'. It further describes its meaning in nautical terms as "a tin container for drink"

and as a verb as “deceive or persuade by glib talk” and in slang as “fool or mess around”.

5. The learned ASG appearing on advance notice has also handed over the extract of the Wikipedia - the online encyclopedia, which describes ‘Fanny’ as a name and gives illustrations of Fanny Adams (who was brutally murdered as far back as in 1867, making sensational headlines), Fanny Ardant (French actress), Fanny Blankers-Koen (Dutch track and field athlete), Fanny Brice (an American Comedienne and actress), Fanny Brownbill (Australian politician), Fanny Cano (Mexican actress), Fanny Cottencon (French actress), Fanny Davies (a British pianist), Fanny Elssler (Austrian ballerina), Fanny Holland (an English singer and comic actress), Fanny Kekelaokalani (a member of the royal family of the Kingdom of Hawaii and mother of a Queen consort), Fanny Law (a Hong Kong former civil servant), Fanny Murray (an English courtesan), Fanny Westerdahl (a Swedish dramatic stage actress), amongst others.

6. The learned ASG further informs that in the film, the word ‘fanny’ is used as a name of one of the lead characters.

7. We may further notice that Wikipedia also lists various fictional characters with the same name viz. Fanny Price (heroine of Jane Austen's 1814 novel Mansfield Park), Aunt Fanny (in Enid Blyton's The Famous Five), amongst others. Wikipedia further proceeds to list that, there is a song of the famous British pop music group Bee Gees by the name of 'Fanny', there was a movie made in the year 1932 and again in the year 1961 and yet again in the year 2013 by the name of 'Fanny' and a particular Broadway musical also by the name 'Fanny'.

8. Wikipedia further lists two ships, townships in Minnesota as also in West Virginia by the name of 'Fanny'.

9. The learned ASG has also referred us to the judgment of a learned Single Judge of this Court in *Maqbool Fida Husain Vs. Raj Kumar Pandey* (2008) VI AD (Delhi) 533 to contend that the legal test of obscenity is satisfied only when the impugned art / matter can be said to appeal to a unhealthy, inordinate person having perverted interest in sexual matters or having a tendency to morally corrupt and debase persons likely to come in contact with the impugned art and once it is found that the piece of art is neither lascivious nor appeals to the prurient interest and it is found that the person who is likely to view the impugned art would not tend to be

depraved or corrupted, though some might feel offended or disgusted, the test of obscenity is not satisfied. The ASG further informs that the film has been duly certified by the Central Board of Film Certification.

10. We may notice that in the Hindi movie 'King Uncle' released in the year 1993, the name of the lead female character was 'Fenni Fernando' pronounced as 'Fanny' only and the said movie also had a song with the by-lines of "*Fenni Ne Mujhe Bulaya*". It is thus not as if the Indian movie viewers would be exposed to the name 'Fanny' for the first time.

11. We are constrained to observe that the petition though filed in public interest, appears to have been filed without any knowledge whatsoever of the legal position.

12. Recently, on 14th August, 2014, a Writ Petition being W.P.(Crl.) No.155/2014 titled *All India Human Rights and Social Justice Front vs. Union of India*, filed in the Supreme Court seeking ban on another forthcoming movie 'PK' on the ground of the same promoting obscenity and hurting religious sentiment with the posters of the film actor Amir Khan standing in nude on a railway track with only a transistor protecting his modesty, was dismissed *in limine*. Though the order of dismissal does not

give any reasons but the news media widely reported, the Court during the hearing having observed that if any such restrictions were imposed, the same could affect the Constitutional right of the film maker and that our society is a very mature society and the petitioners therein should not be so sensitive about such a thing. Though ordinarily we would have not referred to the news reports of what transpired during the hearing and which do not find mention in the order but since the petitioners themselves have based their case on a meaning of the word 'Fanny' in slang, we have taken the liberty to refer to the news reports.

13. Rather we may mention that at least in the northern part of the country, the word 'fanny' spelt as 'feni' or 'fenny' is associated with country liquor / spirit produced exclusively in Goa.

14. We cannot go by the meaning which the word 'Fanny' may have in slang language in another country and which is not the meaning understood in our country. If we were to go by the meanings in other languages, it would be found that a number of Hindi names as well as words of common usage, in other languages have an entirely different meaning and vice-versa. A person cannot be expected to, every time he/she goes to the cinemas/ movies or every time hears a word, rush to the dictionary and to, on the

basis of one of the meanings prevalent elsewhere, rush to the Court alleging that the use of the word is offensive.

15. The Supreme Court recently in *Aveek Sarkar Vs. State of West Bengal* (2014) 4 SCC 257 was concerned with a picture in a German magazine having worldwide circulation, of Boris Becker, a world renowned Tennis player, posing in nude with his dark-skinned fiancée Barbara Feltus, a film actress. It was held that the test in the year 2014 cannot be the same as in the year 1994, when the *lis* had started. It was further held that a picture of a nude / semi-nude woman, *per se* cannot be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire and is designed to excite sexual passion in persons who are likely to see it and which will depend upon the particular posture and the background in which the nude / semi-nude woman is depicted. It was yet further held that obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. Applying the said tests also, the contention of the petitioners that the use *per se* of the word 'Fanny' can be offensive to any average person is rejected. Infact, the Supreme Court as far back as in *Samaresh Bose Vs. Amal Mitra* (1985) 4 SCC 289 also had observed that if a reference to sex by itself is considered to be

obscene and not fit to be read by adolescents, the adolescents will not be in a position to read any novel and will have to read books which are purely religious.

16. We cannot also lose sight of the fact that in today's day and age of internet, nothing is hidden from the youth.

17. A learned Single Judge of this Court also in *Srishti School of Art, Design and Technology Vs. The Chairperson, Central Board of Film Certification* 178 (2011) DLT 337 cited with approval the words of Justice Harlan in *Cohen Vs. California* 403 U.S. 15 (1971) that "we cannot indulge in the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process."

18. Reference may lastly be made to *S. Rangarajan Vs. P. Jagjivan Ram* (1989) 2 SCC 574 where the Supreme Court held that our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. It was further held that the anticipated danger should not be remote, conjectural or far-fetched - it should have proximate and direct nexus with the expression and the expression to which objection is

taken should be equivalent of a "spark in a powder keg".

19. In the facts aforesaid, we do not find the community interest to be in danger. The petitioner no. 1 herself claims that because she is highly educated, she knows the meaning of the word 'fanny' even in slang usage. We must confess that we ourselves were not aware of the said meaning till we perused the dictionaries. We have already observed that the ban as sought to be imposed and direction as sought cannot be issued on the basis of what may not be the commonly understood meaning or what may be the meaning in another language which may be found only on looking up on the internet or on perusing the dictionaries.

20. The petition is totally misconceived and is dismissed; though the facts and circumstances justified imposition of costs but since the petitioners appear to have filed the writ petition for the first time and the Advocate appearing for the petitioners is young, we refrain from doing so.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

SEPTEMBER 10, 2014
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