

REPORTABLE

ITEM NO.2

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No(s).36/2018

VIACOM 18 MEDIA PRIVATE LIMITED & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.8397/2018-STAY APPLICATION and IA No.8399/2018-EXEMPTION FROM FILING O.T.)

Date : 18-01-2018 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
 HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. H.N. Salve, Sr. Adv.
 Mr. Mukul Rohatgi, Sr. Adv.
 Mr. Mahesh Agarwal, Adv.
 Mr. Ameet Naik, Adv.
 Mr. Akshay Patil, Adv.
 Mr. Vivek Jain, Adv.
 Ms. Devika Mohan, Adv.
 Mr. Nishant Rao, Adv.
 Mr. Rajesh Kumar, Adv.
 Mr. E. C. Agrawala, Adv. [AOR]

For Respondent(s) Mr. Tushar Mehta, ASG
 Mr. Shiv Mangal Sharma, AAG
 Mr. Saurabh Rajpal, Adv.
 Mr. S.S. Shamsbery, Adv.
 Mr. Amit Sharma, Adv.
 Mr. Sandeep Singh, Adv.
 Mr. Ankit Raj, Adv.
 Ms. Indira Bhakar, Adv.
 Ms. Ruchi Kohli, Adv. [AOR]

Mr. Tushar Mehta, ASG
 Mrs. Hemantika Wahi, Adv. [AOR]
 Ms. Shodhika Sharma, Adv.

Mr. Anil Grover, AAG
Mr. Ajay Bansal, AAG
Mr. Satish Kumar, Adv.
Mr. Shivam Kumar, Adv.
Mr. Smt. Veena Bansal, Adv.
Mr. Gaurav Yadav, Adv.
Mr. Sanjay Kr. Visen, Adv. [AOR]

Mr. R. Balasubramanian, Adv.
Ms. Aarti Sharma, Adv.
Mr. Akshay Amritanshu, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. Heard Mr. Harish Salve, learned senior counsel and Mr. Mukul Rohatgi, learned senior counsel for the petitioners.
2. Issue notice.
3. As Mr. Tushar Mehta, learned Additional Solicitor General for the States of Gujarat and Rajasthan and Mr. Anil Grover, learned counsel for the State of Haryana have entered appearance on caveat, no further notice need be issued to them.
4. Issue notice to other respondents fixing a returnable date within four weeks.
5. The present writ petition fundamentally assails the notification/order, issued by the two States, viz., State of Gujarat and State of Rajasthan, on 13.01.2018 and 17.01.2018 respectively prohibiting the exhibition of the film, namely, 'Padmaavat'.
6. Be it noted, though the notification issued by the Government of Gujarat has been brought on record, we have been handed over a

copy of the order issued by the Government of Rajasthan. Mr. Anil Grover, learned counsel appearing for State of Haryana has stated, the State has, on principle, taken a decision not to exhibit the film in cinema halls though the said decision has not yet culminated in a formal order.

7. It has been submitted by Mr. Harish Salve and Mr. Mukul Rohatgi, learned senior counsel appearing for the petitioners that the Central Board of Film Certification (CBFC) has issued a Certificate under the Cinematograph Act, 1952 (for brevity 'the Act') after constituting an Expert Committee which had seen the movie, critically examined it and suggested few excisions which have been carried out. That apart, it is urged by them that the CBFC had directed the producer to file two disclaimers which he had filed.

8. The relevant part of the Certificate issued by the CBFC reads as follows:

"After examination of the film by the members of the Examining Committee mentioned below and on the recommendation of the said Examining Committee, the Board hereby certifies that the film is fit for public exhibition with an endorsement of caution that the question as to whether any child below the age of 12 years may be allowed to see the film should be considered by the parents or guardian of such child, and also subject to excision and modification listed in part II on the reverse:

1. ARCHANA VINEET GORE
2. KALAYANI DESHPANDE
3. NUTAN JAGDISH SAGAR
4. HARESH J WADHWANI
5. DEEPAK RAMAKANT TANDEL (E.O.)

Further certified that the excisions and modifications imposed by the Board have actually been carried out."

9. On a perusal of the Certificate it is quite clear that it has been given U/A Certificate. The notification issued on behalf of State of Gujarat by the Joint Secretary to Government is as follows:

"No. (GHT/2018/(1)MIS/102017/229/A: WHEREAS the Government of Gujarat considers it necessary to do so in the public interest and to maintain the law and order situation in the State of Gujarat.

Now, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 6 of the Gujarat Cinemas (Regulation) Act, 2004 (Guj. 21 of 2004) (hereinafter referred to as 'the Act'), the Government of Gujarat hereby imposes the ban on Hindi feature film 'Padmavat' produced by Viacom18 Motion Pictures and Bhansali Productions Pvt. Ltd., within the jurisdiction of the State of Gujarat.

(1) This ban on exhibition of the film shall come into effect from the date of publication of this notification.

(2) No cinema owners or distributors shall exhibit the said movie in any Cinemas/Multiplexes/Video Cinema/Touring Cinema etc., within the jurisdiction of the State of Gujarat.

By order and in the name of the Governor of Gujarat.

Sd/-

(K.L. Patel)

Joint Secretary to Government"

10. The State of Rajasthan has issued an order which is to the following effect:

"GOVERNMENT OF RAJASTHAN

HOME (GR. 6) DEPARTMENT

F.14 (3) Home-6/2013 Part Dated : 17th January, 2018ORDER

WHEREAS the Government of Rajasthan considers it necessary so to do in public interest and to maintain the law and order situation in the State of Rajasthan.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 7 of the Rajasthan Cinemas (Regulation) Act, 1952 (Act No. XXX of 1952) (hereinafter referred to as 'the Act'), the Government of Rajasthan hereby imposes ban on the exhibition of Hindi feature film 'Padmavat' (earlier named 'Padmavati') produced by Viacom 18 Motion Pictures and Bhansali Productions Pvt. Ltd., within the jurisdiction of the State of Rajasthan.

(1) This ban on exhibition of the film shall come into effect from the date of publication of this order.

(2) No cinema owner or distributor shall exhibit the said movie in any Cinema/Multiplex/Video Cinema/Touring Cinema etc., within the jurisdiction of the State of Rajasthan.

By order and in the name of Governor.

(Paramjeet Kaur)

Senior Deputy Secretary"

11. Disclaimer Nos.1 and 2 are to the following effect :

"Disclaimer -I

The Film 'Padmaavat' is inspired from the epic poem Padmavat, written by Malik Muhammad Jayasi, which is considered a work of fiction. This Film does not infer or claim historical authenticity or accuracy in terms of the names of the places, characters, sequence of events, locations, spoken languages, dance forms, costumes and/or such other details. We do not intend to disrespect, impair or disparage the beliefs, feelings, sentiments of any person(s), community(ies) and their culture(s), custom(s), practice(s) and

tradition(s).

Disclaimer-II

This Film does not intend to encourage or support 'Sati' or such other practices."

12. It has been submitted by learned senior counsel appearing for the petitioners that the States could not have prohibited exhibition of the film in cinema halls in view of the two-Judge Bench judgment in the case of *Prakash Jha Productions & Anr. v. Union of India & Ors.* (2011) 8 SCC 372. They have drawn our attention to paragraphs 17, 18, 19, 20 and 27 thereof. The said paragraphs read as follows:

"17. Before dealing with the said contentions, we would like to deal with the provision of the Act on the basis of which the aforesaid decision is taken. There is no dispute that the impugned decision is taken in the purported exercise of power under Section 6 of the Act. A bare perusal of the aforesaid provision in Section 6 of the Act would make it crystal clear that the power vested therein could be exercised by the State under the said provision when a film which is being publicly exhibited could likely cause a breach of peace. Only in such circumstance and event, an order could be passed suspending the exhibition of film.

18. The expression "being publicly exhibited" and the word "suspension" are relevant for our purpose and, therefore, we are giving emphasis on the aforesaid expression and the word. When it is said that a film is being publicly exhibited, it definitely presupposes a meaning that the film is being exhibited for public and in doing so if it is found likely to cause breach of peace then in that event such a power could be exercised by the State Government. Such an extraordinary power cannot be exercised with regard to a film which is yet to be exhibited openly and publicly in a particular State. This view that we have taken is also fortified from the use of the word "suspension" in

the said section.

19. The word "suspension" envisages something functional or something which is being shown or is running. Suspension is always a temporary phase, which gets obliterated as and when the previous position is restored. Therefore, the power as vested under Section 6 of the Act could not have been exercised by the State of Uttar Pradesh in view of the fact that the said film was not being exhibited publicly in the theatre halls in U.P. Consequently, at this stage, when the film is not screened or exhibited in the theatre halls publicly and for public viewing, neither an opinion could be formed nor could any decision be taken that there is a likelihood of breach of peace by exercising power purported to be under Section 6 of the Act.

20. The counsel appearing for the State has also submitted that in fact the film already is being exhibited in the State of Uttar Pradesh as a High-Level Committee has seen the film. We cannot accept the aforesaid position as the expression specifically uses the words "publicly exhibited" meaning thereby that it is being exhibited all over and publicly for public viewing in the State.

... ..

27. It is for the State to maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially. Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the present case. As held in *K.M. Shankarappa* it is the responsibility of the State Government to maintain law and order."

It is urged by them, once a Certificate has been issued by the CBFC, the States cannot issue notifications or orders prohibiting exhibition of film in theatres. On the contrary, as has been stated in paragraph 27 of the judgment in *Prakash Jha* (supra), it is obligatory on the part of the State to maintain the law and

order situation effectively because it is the responsibility of the State to maintain law and order as has been laid down in the case of *Union of India v. K.M. Shankarappa* (2001) 1 SCC 582.

13. Learned senior counsel would further argue that Section 5A of the Act deals with 'Certification of films' and CBFC exercises the statutory power. Sub-section (3) covers many an area. Sub-section (3) of the said Section reads thus :

"5A. Certification of films. -

(1)

(2)

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout India for a period of ten years."

It is contended by Mr. Salve and Mr. Rohatgi that the Act is a parliamentary legislation and the CBFC has been constituted under the said Act and once the CBFC exercises the power and suggests certain excisions and the producers without appealing against the said directions, accept the same and certificate is issued, the States, taking recourse to law and order, cannot prohibit the film from being exhibited. It is also contended by them, the term 'being publicly exhibited' as has been interpreted in the case of *Prakash Jha* (supra) has to be appositely understood by the authorities. Learned senior counsel would contend that the freedom of speech and expression and the creative potentiality through any medium including the medium of celluloid cannot be curtailed in this manner.

14. Mr. Tushar Mehta, learned Additional Solicitor General would submit that the grant of Certificate by the CBFC cannot denude the the State of the power to prohibit the exhibition of a film. He has drawn our attention to Section 5B of the Act which is as follows:

"5B. Principles for guidance in certifying films.- (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."

That apart, he has also drawn our attention to Section 7 of the Rajasthan Cinemas (Regulation) Act, 1952 which reads as follows:

"7. Power to suspend exhibition of films in certain cases - (1) The State Government in respect of the whole or any part of the State of Rajasthan and the District Magistrate in respect of the district within his jurisdiction may, if it or he is of opinion that any film which is being publicly exhibited is likely to cause breach of the peace by order suspend the exhibition of such film and during such suspension, the film shall be deemed to be an uncertified film in such whole, part or district of the State of Rajasthan.

(2) Where an order under sub-section (1) has been issued by a District Magistrate, a copy thereof together with a statement of reason therefor, shall forthwith be forwarded to the State Government and the State Government may on a consideration of all the

facts of the case confirm, modify or cancel the order.

(3) An order made under this section shall remain in force for a period of two months from the date thereof but the State Government may if it is of opinion that the order should continue in force direct that the period of suspension shall be extended by such further period, as if it thinks fit."

It is also further urged by him that the CBFC is not in a position to take all aspects into consideration as it does not have the inputs regarding the law and order situation in the concerned States.

15. For the present, we are considering the prayer for grant of interim relief, i.e., whether the notifications/orders prohibiting the exhibition of the film should be stayed or not. The creative content is an insegregable aspect of Article 19(1) of the Constitution. Needless to emphasise, this right is not absolute. There can be regulatory measures. Regulatory measures are reflectible from the language employed under Section 5B of the Act and the guidelines issued by the Central Government. Once the parliamentary legislation confers the responsibility and the power on a statutory Board and the Board grants certification, non-exhibition of the film by the States would be contrary to the statutory provisions and infringe the fundamental right of the petitioners. That apart, as we understand at present from paragraph 27 of the judgment in the case of *Prakash Jha* (supra), it is the duty and obligation of the State to maintain law and order in the State. We may also note here with profit that the guidelines are to be kept in mind by CBFC. For the sake of completeness, we

reproduce the relevant part of the guidelines :

"2. In pursuance of the above objectives, the Board of Film Certification shall ensure that-

... ..

(vii) human sensibilities are not offended by vulgarity, obscenity or depravity;

... ..

(ix) scenes degrading or denigrating women in any manner are not presented;

... ..

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

(xiii) visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes are not presented;

... ..

(xvii) public order is not endangered;"

It has to be borne in mind, expression of an idea by any one through the medium of cinema which is a public medium has its own status under the Constitution and the Statute. There is a Censor Board under the Act which allows grant of certificate for screening of the movies. As we scan the language of the Act and the guidelines framed thereunder it prohibits use and presentation of visuals or words contemptuous of racial, religious or other groups. Be that as it may. As advised at present once the Certificate has been issued, there is prima facie a presumption that the concerned authority has taken into account all the guidelines including public order.

16. Mr. Mehta would urge that grant of an interim order would tantamount to final expression of an opinion on the merits of the

case. We do not think so. If a substantial ground is established in law by the States, there may be a different perception, for we are passing an interim order, considering the prima facie case and having due regard to the fundamental conception of right of freedom of speech and expression.

17. In this regard we may reproduce a passage from an order of this Court in the case of *Nachiketa Walhekar v. Central Board of Film Certification & Anr.* passed on 16.11.2017 in W.P. (C)No.1119 of 2017:

"Be it noted, a film or a drama or a novel or a book is a creation of art. An artist has his own freedom to express himself in a manner which is not prohibited in law and such prohibitions are not read by implication to crucify the rights of expressive mind. The human history records that there are many authors who express their thoughts according to the choice of their words, phrases, expressions and also create characters who may look absolutely different than an ordinary man would conceive of. A thought provoking film should never mean that it has to be didactic or in any way puritanical. It can be expressive and provoking the conscious or the sub-conscious thoughts of the viewer. If there has to be any limitation, that has to be as per the prescription in law."

In view of the aforesaid, we direct there shall be stay of operation of the notifications and orders issued by the respondent-States and we also restrain the other States to issue notifications/orders in any manner prohibiting the exhibition and we are sure, the concerned State authorities shall keep paragraph 27 of the judgment in the case of *Prakash Jha* (supra) in mind which clearly lays down that it is the paramount obligation of the State to maintain law and order. It should always be remembered that if

intellectual prowess and natural or cultivated power of creation is interfered without the permissible facet of law, the concept of creativity paves the path of extinction; and when creativity dies, values of civilization corrode.

Keeping in view the fact situation, we have no hesitation in stating by way of repetition and without any fear of contradiction that it is the duty of the State to sustain the law and order situation whenever the film is exhibited, which would also include providing police protection to the persons who are involved in the film / in the exhibition of the film and the audience watching the film, whenever sought for or necessary.

Let the matter be listed on 26th March 2018 for final disposal.

Pleadings shall be completed in the meantime.

(Subhash Chander)
AR-cum-PS

(H.S. Parasher)
Assistant Registrar