

R.M. AMBERKAR  
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O.O.C.J.**

**WRIT PETITION NO. 2039 OF 2018**

Indian Motion Picture Producers  
Association .. Petitioner

Versus

Union of India & Ors. .. Respondents

- .....
- Mr. A.M. Saraogi for the Petitioner
  - Mr. Advait Sethna for the Respondents
- .....

**CORAM : AKIL KURESHI &  
S.J. KATHAWALLA, JJ.**

**DATE : SEPTEMBER 25, 2019.**

**P.C.:**

**1.** Heard learned counsel for the parties for final disposal of the petition.

**2.** The petitioner is the association of producers of motion pictures. Petitioner has raised a grievance about a notice dated 27.4.2017 issued by the Central Board of Film Certification ("**CBFC**" for short) which reads as under:-

“It has been recently observed that a number of films are screened before CBFC and subsequently certified without any sub-titles. However, after certification, some of the firms are found to be exhibited with sub-titles without even seeking endorsement of CBFC

under Rule 33. As per Rule 22(3) of the Cinematograph (Certification) Rules, 1983, only the final version of the film is to be shown to the Examining committee for certification purposes.

**It is therefore directed that all the applicants must submit an undertaking along with the application clearly stating either that -a) Subtitles are included; or b) Subsequently no subtitles will be added once the film is certified by CBFC."**

**3.** The short grievance of the petitioner arises in the following background:-

The members of the petitioner association produce motion films and exhibit them after obtaining certification from CBFC in terms of The Cinematograph Act, 1952 ("**the Act**" for short). Its case is that after such certification, often times, the need arises for providing sub-titles to the films, particularly in situations where the film is to be exhibited in the regions where the language of the film is not familiar with the audience. For example, when a Hindi film is to be exhibited in south of India, often times, the producer / distributor may opt to provide sub-titles to enable the audience to follow the dialogues better. According to the petitioner, this addition of sub-titles would merely require an intimation to the CBFC and the endorsement of the CBFC of its acceptance on the certificate already issued. So long as so much of the procedure is followed, the petitioner has no

objection. However, the petitioner would contend that the CBFC insists on such sub-titles passing through the entire fresh gamut of certification as if the film is presented for certification afresh or *de novo*. This according to the learned counsel for the petitioner entails considerable expenditure as also consumption of considerable time.

**4.** Learned counsel for CBFC opposed the petition contending that the powers of CBFC flow from Section 5-B of the Act and the procedure is laid down in Rule 33 of the Cinematograph (Certification) Rules, 1983. ("**the Rules**" for short) read with Rule 22(3) thereof.

**5.** Having heard the learned counsel for the parties, we notice that CBFC itself in an affidavit dated 14.8.2018 filed by one Mr. Kamlakar Kamble has explained the position of CBFC as under:-

"7. To put it simply, the CBFC is duty bound and obligated to ensure that film makers do not insert even words or visuals after a film is duly certified, without following Rule 33 of the said Rules. Such insertion of words in the form of subtitles after the film is certified, glossing over Rule 33 of the said Rules, dilutes and distorts the object and purpose, inter alia, also, behind Section 5B read with the Notification dated 6th December, 1991. In this context, attention is invited to the Impugned Notice. A careful perusal and proper reading of the said Notice indicates that the rationale behind the notice is to

curb the mischief noticed in a number of films where subtitles were introduced, added, after certification of the film by CBFC, amounting to an alteration in the said film after certification, which requires endorsement on the backside of the original certificate by the CBFC, as stipulated under Rule 33. Such alterations made without adhering to Rule 33, run contrary to the letter and spirit of Rule 22(3) of the Cinematograph (Certification) Rules, 1983 (hereinafter referred to as the said 'Rules'), as they are made after examination of the film by the examining committee which was 'complete' in all respects and in some cases even after certification by CBFC, not complying with Rule 33. **Such alteration manifesting in the form of excision, addition, colouring or otherwise after the film has been certified under the said Rules shall not be exhibited unless such altered portions have been reported to the Board in Form-III in the Second Schedule and the Board has endorsed the particulars of the alteration or alterations on the certificate, as mandated under Rule 33 of the said Rules. The Impugned Notice, thus, is aimed at preventing the mischief in cases where the subtitles are introduced in the form of alterations after the film is certified, without complying with the mandate under Rule 33 of the said Rules.**

8. The Respondents further submit that the purport and purpose behind the Impugned Notice be succinctly explained by this instance/ illustration. In respect of many films where cuss words are used which are not permissible under the present statute the same are muted during or before the film is released, after certification. In such cases, if the subtitles of the film replicating such objectionable dialogue/ content are introduced in the form of alteration after the film in its final form is examined by the examining committee and after certification thereof by the CBFC of the dialogue /content, without following the mandate under Rule 33, such cuss words in the form of subtitles continue to be exhibited in the said film, which, runs contrary to the present scheme of the Act and Rules. Such practice of making alterations without following Rule 33 of the said Rules, completely waters down the legislative intent behind the said Rule is that any alteration as specified thereunder, made after any film is examined in its final form by the Examining Committee and then certified by the Board, such subsequent alterations have to be reported to the Board and endorsed in the manner provided under Rule 33. The *sumun bunun* of the Impugned Notice is to ensure that

alterations which are made after certification of the Film under the said Rules are duly reported to the Board, in the Form prescribed in the said Rule. If this mischief is not plugged and or curbed it will discriminate against those film makers who scrupulously follow the mandate under Rule 33 and will proliferate violation of the said Rule. This, the present reply, in the paragraphs below records illustration where several film makers are consciously adhering to the mandate under the said Rule. Thus, the Respondent No. 1 by the present Notice is ensuring that a level-playing field is maintained by introducing such checks and balances under the Impugned Notice which in letter and spirit upholds the scheme and framework of the Cinematograph Act and Rules in its present form. Thus, subtitles may be tendered before the CBFC along with the film in its Final Form for examination by the Examining Committee under Rule 21 of the said Rules or such alteration in the form of subtitles inserted after certification by CBFC, may be reported to CBFC for endorsement on the backside of the original certificate as mandated under Rule 33 of the said Rules. Accordingly, it is clear that ample opportunity is extended to film makers and producers before and/or even after certification of a film in respect of alterations that include sub titles.”

**6.** Even according to the CBFC thus, any addition of subtitles after certification of the film is required to be reported to the Board in Form III in the Second Schedule and the Board has to endorse the particulars of the alteration on the certificate, as mandated under Rule 33 of the said Rules. In plain terms, the petitioner does not object to this proposition at all. The entire controversy, therefore must end here. Ordinarily, therefore, the matter would have been closed at this stage. However, the impugned notice creates

considerable doubt and in fact, travels beyond the stand of CBFC adopted in the said affidavit in reply. In the said notice, the concerned persons are directed that all applicants must submit an undertaking along with an application clearly stating that the sub-titles are included or subsequently, no titles will be added once the film is certified by the CBFC. This direction is unsustainable for two reasons:- firstly, it mandates that the film maker must submit with the film sub-titles if he desires that the film should carry sub-titles. Once the film is certified, no sub-titles would be permitted to be added. We do not see any source of power on the part of the CBFC under the Act or the Rules to give such a mandate. In a given case, a film maker may decide to add sub-titles after a period of time when he wishes to exhibit the film in a region where the language is different from one used in the film. At that point of time, necessity of adding sub-titles may arise. There is no reason that this should be prevented. The second infirmity in this direction is that it runs contrary to the stand of the CBFC itself explained in the affidavit in reply, relevant portion of which is reproduced in this order. As per the affidavit in reply, sub-titles could be added in a

film which is already certified as per the procedure by reporting the same to CBFC in prescribed format and getting endorsement of the CBFC on the certificate. To the extent, the said notice is in conflict with the stand of the CBFC noted in the affidavit in reply, the same is held to be unsustainable.

**7.** The respondents shall follow the procedure for allowing addition of sub-titles to the film which is already certified by following the procedure explained in the affidavit in reply particularly in the quoted portion thereof. Petition is disposed of with these observations and direction.

**[ S.J. KATHAWALLA, J. ]**

**[ AKIL KURESHI, J ]**