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*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1557/2018 & CM No. 6396/2018

% Date of decision : 22nd February, 2018

SWAMI AGNIVESH

..... Petitioner

Through : *Mr. Mehmood Pracha, Mr. RHA Sikander and Mr. Prateek Gupta, Advocates alongwith Swami Agnivesh (petitioner – in – person)*

versus

UNION OF INDIA & ORS.

..... Respondents

Through : *Mr. Manish Mohan, CGSC with Dr. GL Bhatia, Advocates for Union of India (respondent no. 1)*

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

WP(C) No.1557/2018

1. This writ petition seeks directions to the Central Board of Film Certification, to take “*appropriate steps to stop glorification of the practice of ‘Sati’ by deleting the relevant scenes from the film ‘Padmaavat’.*”
2. The petition is premised on two articles, one by Ms. Charu

Gupta in the Indian Express dated 31st of January 2018 captioned “*United in misogyny*” and another article written by an actor Ms. Swara Bhasker in the Wire captioned “*At the End of Your Magnum Opus ... I Felt Reduced to a Vagina – Only*”. A copy of this article, which stands handed over to this court, would show that it was written on the 27th of January 2018. The petitioner submits that after reading these two articles relating to the film *Padmaavat*, he himself wanted to check the veracity of the contentions made therein regarding glorification of the practices ‘*Sati*’ and ‘*Jauhar*’ and therefore, personally watched the film at the PVR Plaza in New Delhi. Having seen the movie, the petitioner is convinced that the abhorrent practice of ‘*Sati*’ has been glorified out of proportion in the said movie.

3. The present writ petition, filed against the Union of India (Ministry of Information and Broadcasting) (*respondent no.1*); Delhi Police (*respondent no.2*); Central Board of Film Certification (*respondent no.3*); Ajit Andhare, Producer, *Padmaavat* (*respondent no.4*) and Mr. Sanjay Leela Bhansali (Director & Producer – *Padmaavat*) (*respondent no.5*), seeks the following prayers :

“(i) issue a writ of mandamus or any other appropriate writ/order/direction directing the Respondent No.3 to take appropriate steps to stop glorification of the practice of ‘*Sati*’ by deleting the relevant scenes from the film “*Padmaavat*” and

(ii) issue a writ of mandamus or any other appropriate writ/order/direction directing the State Authorities to ensure that the scenes promoting and glorifying the act of ‘*Sati*’ are not screened in public; and

(iii) *restrain the Respondents from continuing to glorify the act of 'Sati' through promotion and further broadcast of the scenes relating to such act in the film "Padmaavat"; and*

(iv) *direct the Respondent No.2 to immediately register F.I.R. against the Respondents No. 4 and 5 on the basis of the complaints filed by the petitioner;...*"

4. The making and exhibition of this film has had a tumultuous background and history. Different aspects thereof have been the subject matter of challenges before the Supreme Court of India. Even before the Board of Film Certification, exercising jurisdiction under the Cinematograph Act, 1952, had processed the application of the film producers for the requisite certification, a writ petition being W.P.(Crl.)No.191/2017 was filed before the Supreme Court of India by one Manohar Lal Sharma, a practicing advocate, which was titled Manohar Lal Sharma v. Sanjay Leela Bhansali & Ors. In this writ petition, a prayer was made seeking prohibition of exhibition of the film 'Padmaavat' in other countries without obtaining the requisite certificate from the Central Board of Film Certification and issuance of writ of *mandamus* to the Central Bureau of Investigation (CBI), impleaded as respondent No.5 therein, to register an FIR against the respondent Nos.1 and 2 therein and their team members for commission of offences punishable under Sections 153A, 295, 295A, 499 and 500 of the Indian Penal Code, 1860 read with Sections 4 and 7 of the Indecent

Representation of Women (Prohibition) Act, 1986 and a further direction to investigate and prosecute them in accordance with law.

5. It appears that this very Manohar Lal Sharma had earlier instituted W.P.(CrI.)No.186/2017 when the Supreme Court took notice of the fact that the application for grant of requisite certificate was pending before the Board of Film Certification and consequently, disposed of the writ petition by an order dated 20th of November 2017 observing as follows :

“In the course of hearing, we have been apprised that the film in question, i.e., ‘Padmavati’ has not yet received the Certificate from the Central Board of Film Certification.

In view of the aforesaid, our interference in the writ petition will tantamount to pre-judging the matter which we are not inclined to do. The writ petition is accordingly disposed of.”

6. The court had taken exception to the filing of the writ petition even before the Board of Film Certification, a statutory authority, had taken a decision in the matter on the application for the certification.

7. W.P.(CrI.)No.191/2017 was thereafter filed by Manohar Lal Sharma on the apprehension that the first respondent was planning to exhibit the film in other countries which had an international market and hence the above prayers for registration of the case, investigation and prosecution thereof by the CBI in accordance with law. This writ petition stands dismissed by an order dated 28th of November 2017 by the Supreme Court observing, so far as the commission of criminal offences are concerned, as follows :

“7. The controversy does not end there. As stated earlier, the further prayer is for issuance of direction to the respondent no. 5 – CBI to register an FIR against respondent Nos. 1 and 2 and their team members for offence punishable under Section 7 of the Act read with Sections 153A, 295, 295A, 499 and 500 of the Indian Penal Code read with Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986. As far as Sections 499 and 500 of the IPC is concerned, police has no role. As far as the other offences are concerned, it is unfathomable how any offence is made out. There is no basis for this Court to direct registration of an FIR and we have no hesitation in stating that the prayer is absolutely misconceived.”

(Emphasis by us)

8. It is an admitted position that the necessary certification stands granted by the Board of Film Certification to the film. However, the travails of the film Producer (*respondent No.4 herein*) and Director (*respondent No.5 herein*) did not end with these two writ petitions filed in the Supreme Court.

9. Mr. Manish Mohan, Central Government Standing Counsel, who appears for the respondent no.1, has handed over a copy of the order dated 18th January, 2018 passed by the Supreme Court in *W.P.(C)No.36/2018, Viacom 18 Media Private Limited & Ors. v. Union of India & Ors.* This writ petition was filed by the distributors compelled to challenge notifications/orders issued by the State Governments of Gujarat and Rajasthan on 13th January, 2018 and 17th January, 2018 respectively prohibiting the exhibition of the film ‘*Padmaavat*’. In the order dated 18th January, 2018, the Supreme Court has extracted the certificate issued by the Board of

Film Certification to the petitioner, which 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.”
(Emphasis by us)

10. Given the nature of challenge raised in the present case, it is necessary to notice the examination and scrutiny which is undertaken by the Board of Film Certification before issuing a certificate under the Cinematograph Act, 1952 permitting the release and exhibition of a film. As per the scheme of the enactment, the Board of Film Certification is constituted under Section 3 of the statute. Any person desiring to exhibit any film is required to make an application to the said Board for a certificate in respect thereof under Section 4 and the Board, may, after examining or having the film examined, sanction or refuse to

certify a film for public exhibition. The certification of films is effected under Section 5A of the statute.

11. For the purposes of the present consideration, the relevant portions of Sections 4 and 5A of the enactment in *extenso* may usefully be extracted and read as follows:

“4. Examination of films.—(1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner,—

(i) sanction the film for unrestricted public exhibition:

Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or

(ii) sanction the film for public exhibition restricted to adults; or

(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or

(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or

(iv) refuse to sanction the film for public exhibition.

(2) No action under 1 [the proviso to clause (i), clause (ii), clause (iia), clause (iii) or clause (iv)] of sub-section (1) shall be taken by the Board except after giving an **opportunity to the applicant for representing his views in the matter.**

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5A. Certification of films.— (1) If, after examining a film or having it examined in the prescribed manner, the **Board considers that—**

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for **unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (i) of sub-section (1) of section 4**, it shall grant to the person applying for a certificate in respect of the film a **“U” certificate** or, as the case may be, a **“UA” certificate**; or

(b) the film is **not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults** or, as the case may be, is suitable for public exhibition **restricted to members of any profession or any class of persons**, it shall grant to the person applying for a certificate in respect of the film an **“A” certificate** or, as the case may be, a **“S” certificate**, and cause the film to be so marked in the prescribed manner:

Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).

(2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(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.”

(Emphasis by us)

12. So far as the certification of films for public exhibition is concerned, in exercise of powers conferred by sub-section 2 of Section 5B of the Cinematograph Act, 1952, the Central Government has issued “**Guidelines for Certification of Films for Public Exhibition**” which guide the consideration of a request for the same by the Board of Film Certification. We extract hereunder the relevant portion of Guideline 2 which has a bearing on the present consideration :

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

(i) anti-social activities such as violence are not glorified or justified;

... ..

*(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;**”*

(Emphasis by us)

13. In *Viacom*, the court had noted that the film was given U/A certificate. The Board of Film Certification has applied its mind before grant of certificate and has left it to the sensibilities and evaluation by the parents or guardians as to whether their child below 12 years of age should be allowed to see the film.

14. So far as the film itself is concerned, two disclaimers stand recorded by the Director and Producer of the film (extracted in the order of the Supreme Court dated 18th January, 2018) which 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.

(Emphasis by us)

15. The first disclaimer therefore, clearly informs the viewer that it is based on an epic poem *Padmaavat* written by *Malik Muhammad Jayasi*, which is considered a work of fiction. It is declared that the film has no historical authenticity or accuracy in

any of the material details and that there is no intention 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). The second disclaimer clearly declares the intent of the Director that the film in no manner intends to encourage or support 'Sati' or any such practice.

16. In view of the certification of the film by the Board of Film Certification, the protection under the *proviso* to Section 5A(1)(b) of the Act would become available to the persons named.

17. In this background, the decisions of the State of Gujarat by the order dated 13th January, 2018 and State of Rajasthan by the order dated 17th January, 2018 to ban exhibition of the film in the respective States were assailed by Viacom 18 Media Private Limited before the Supreme Court. The prayer for grant of an interim order was considered by the court on 18th January, 2018, when the court considered the guidelines which are required to be kept in mind by the Board of Film Certification before grant of certification. It was directed that there shall be a stay of the operation of the notifications and orders issued by the respondent States as well as a prohibition against other States from issuing notifications/orders in any manner prohibiting the exhibition of the film.

18. It is to be noted that the certifications granted by the Board of Film Certification to the film in question as well as the orders passed by the Supreme Court in the above writ petitions have received tremendous publicity. The making and completion of the

film, its subject matter, the date of release have all received wide publicity in every medium.

19. It is not disputed that as on date, the film stands released and has been exhibited in several parts of the country. This writ petition filed long thereafter on or about the 15th of February 2018 is yet another device to interdict the exhibition of the film.

20. The basic contention on which this writ petition is premised is that, in the film *Padmaavat*, the respondent nos.4 and 5 have glorified the act of “*self-immolation in one of the most elaborately choreographed ‘Sati’ or ‘Jauhar’ scenes in the history of Indian cinema*” which act constitutes ‘*glorification*’ under the provisions of the *Commission of Sati (Prevention) Act, 1987*.

21. For expediency, we may extract Section 2(b) of the said enactment which defines ‘*glorification*’ in the following terms :

“2. Definitions.- (1) *In this Act, unless the context otherwise requires.-*

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(b) “*glorification*” in relation to sati, whether such sati, was committed before or after the commencement of this Act, includes, among other things.-

(i) the observance of any ceremony or the taking out of a procession in connection with the commission of sati; or

(ii) the supporting, justifying or propagating the practice of sati in any manner; or

(iii) the arranging of any function to eulogise the person who has committed sati; or

(iv) the creation of a trust, or the collection of funds, or the

construction of temple or other structure or the carrying on of any form of worship or the performance of any ceremony thereat, with a view to perpetuate the honour of, or to preserve the memory of, a person who has committed sati;

xxx

xxx

xxx”

(Emphasis by us)

22. A bare reading of the statutory provision would show that the statute refers to *Sati*, “*whether such Sati was committed before or after the commencement of this Act*”. Therefore, reference in Section 2(1)(b) of the statute is to an actual practice of “*Sati*” and not to a visual depiction of an imaginary work of fiction as portrayed in the film. Section 2(1)(b)(ii) refers to “*supporting, justifying or propagating the practice of Sati in any manner*”.

23. As noted, at the outset, this writ petition has come after the film has received the certification under the Cinematograph Act, 1952 after protracted litigation and a close scrutiny by the experts. Changes and excision which were directed by the Board, stand effected. The Board has exercised its discretion carefully and not given a ‘*U*’ certificate for unrestricted viewing but granted a ‘*U/A*’ certification.

24. As on date, the film stands released as well without any complaint. The content of the film has therefore, been in public domain for a long time. If at all the petitioner had any grievance, he could have placed the relevant material before the Board of Film Certification at an appropriate time.

25. We also note that the writ petitioner has placed reliance on

two articles which are critical of the portrayal by the respondent nos.4 and 5 in the film. In this regard, it would be appropriate to note that in the aforesaid order dated 18th January, 2018, the Supreme Court has extracted from an earlier pronouncement dated 16th November, 2017 in W.P.(C)No.1119/2017, *Nachiketa Walhekar v. Central Board of Film Certification & Anr*, wherein on the issue of artistic expression, the court observed as follows :

“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.”

(Emphasis by us)

26. Therefore, while the two persons authoring the articles relied upon by the petitioner have critiqued the film, clearly it is their view and perception regarding the film. The petitioner is entitled to form a similar opinion and agree with them. It is apparent that at the same time, there are several others who have considered the impact of the film from other perspectives and do not share the views the petitioner or the two authors. Certainly writs cannot be issued against artistic works premised on individual perceptions.

27. In para 10 of the writ petition itself, the Disclaimer (1) contained in the film is noted. It is stated that the film was inspired from the epic poem *Padmaavat*, written by *Malik Muhammad Jayasi*, which was considered a work of fiction. Producers of the film do not claim any historical authenticity or accuracy for the same. The writ petitioner does not contest the correctness of the contents of the disclaimer.

28. By way of Disclaimer (II), it is unequivocally declared the film does not intend to encourage or support ‘*Sati*’ or such practices.

29. As noted above, the entire writ petition is premised on the sole submission that it has elaborately choreographed the ‘*Sati*’ or ‘*Jauhar*’ scenes in the history of Indian cinema. The writ petitioner does not even state at all that the film is ‘*supporting, justifying or propagating the practice of sati*’. It is therefore, not possible to hold that the film would invite penal action under the Commission of Sati (Prevention) Act, 1987.

30. So far as the sanctity to be attached to a certificate granted by the Board of Film Certification is concerned, in the order dated 18th January, 2018 in *Viacom 18 Media Pvt. Ltd.*, the Supreme Court of India has held that there would be a *prima facie* presumption that the concerned authority has taken into account all the Guidelines before issuance of the certificate. The order stands recorded with regard to the certificate accorded by the Board of Film Certification to the film ‘*Padmaavat*’ and binds the present consideration.

31. We have discussed heretofore the scheme of the Cinematography Act, 1952 as well as the Guidelines for Certification of Films for Public Exhibition which guide the Board considering an application for grant of a certificate to enable exhibition of the film.

32. The object and impact of these Guidelines were considered by the Supreme Court in the pronouncement reported at (1996) 4 SCC 1, *Bobby Art International v. Om Pal Singh Hoon* in the following terms :

“22. The guidelines aforementioned have been carefully drawn. They require the authorities concerned with film certification to be responsive to the values and standards of society and take note of social change. They are required to ensure that “artistic expression and creative freedom are not unduly curbed”. The film must be “judged in its entirety from the point of view of its overall impact”. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience. Clause 2 requires that human sensibilities are not offended by vulgarity, obscenity or depravity, that scenes degrading or denigrating women are not presented and scenes of sexual violence against women are avoided, but if such scenes are germane to the theme, they be reduced to a minimum and not particularised.

23. The guidelines are broad standards. They cannot be read as one would read a statute. Within the breadth of their parameters the certification authorities have discretion. The specific sub-clauses of clause 2 of the guidelines cannot outweigh the sweep of clauses 1 and 3 and, indeed, of sub-clause (ix) of clause (2). Where the theme is of social relevance, it must be allowed to prevail.

*Such a theme does not offend human sensibilities nor extol the degradation or denigration of women. It is to this end that sub-clause (ix) of clause 2 permits scenes of sexual violence against women, reduced to a minimum and without details, if relevant to the theme. **What that minimum and lack of details should be is left to the good sense of the certification authorities, to be determined in the light of the relevance of the social theme of the film.***”

(Emphasis by us)

33. As noted above, in the present case, the Board has scrutinized the film in the light of the statutory provisions and the above Guidelines. It has recommended removal of scenes, etc. to the original film which stand effected and even thereafter, a qualified ‘U/A’ certificate has been granted after application of mind and consideration of all relevant materials.

34. For all these reasons, we find no merit in this writ petition which is hereby dismissed.

CM No.6396/2018

In view of the order passed in the writ petition, this application does not survive for adjudication and is hereby dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 22, 2018/aj