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

+ W.P.(C) 522/2024

NIPUN MALHOTRA

..... Petitioner

Through: Mr. Jai Anant Dehadrai, Mr. Md Tasnimul Hassan, Mr. Siddharth Sharma, Mr. Martin George and Mr. Shivam Kunal, Advocates

versus

SONY PICTURES FILMS INDIA PRIVATE LIMITED & ORS.

..... Respondent

Through: Mr. Atmaram NS Nandkarni, Senior Advocate with Mr. Alipak Banerjee, Ms. Tanisha Khanna, Ms. Karishma Karthik, Ms. Kamayani Sharma, AR, Mr. Namit Chatrath, AR, Mr. Salvador Santosh Rebello and Mr. Brijesh Ujjainwal, Advocates for R-1

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Date of Decision: 15th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (O R A L)

1. The Petitioner, a person with disability, has filed this writ petition as a Public Interest Litigation being aggrieved by the actions of Respondent No.1 i.e., Sony Pictures Films India Pvt. Ltd., in producing a movie '*Aankh Micholi*' ('Movie'), in which, allegedly derogatory and discriminatory remarks are made against the Persons with Disabilities ('PwDs').

2. The Petitioner by way of this petition is, inter alia, at prayer (a) seeks



a direction to Respondent No.2, Central Board of Film Certification ('CBFC'), to include an expert on the subject matter of the Rights of Persons with Disabilities Act, 2016 ('RPWD Act') within the Board of Film Certification under Section 3 of the Cinematograph Act, 1952 ('Act of 1952') and advisory panel constituted under Section 5 of said Act. The Petitioner also seeks relief(s) against Respondent No.1 including the relief of punitive damages to any charitable organization that support PwDs and a public apology.

3. Learned counsel for the Petitioner states that Respondent No.1 in its Movie has portrayed several characters suffering from physical disability as stooge and anomalous to common people. He states that the Movie includes scenes and characterization that are not only distasteful but also reinforce negative stereotypes. He states that the specific instances of the derogatory remarks against the PwDs in the movie have been set out at paragraph nos. 8 and 9 of the writ petition. He states the Movie is violative of Section 3(3) of the RPWD Act.

3.1. He states that the Movie was released on 03.11.2023 and has since flopped at the box office. He states that after viewing the Movie's trailer, which was published on 26.09.2023, the Petitioner had issued a legal notice to Respondent No.1 which was replied to on 17.10.2023 denying the contentions citing creative freedom.

3.2. During the course of arguments, he states that the Petitioner would be satisfied if the Court considers the relief at prayer (a) sought against Respondent No.2 to include an expert within the CBFC and on the advisory panel constituted under Sections 3 and 5 of the Act of 1952 respectively.

4. The learned Senior Counsel for Respondent No.1 states that the reliefs



sought in this petition are untenable. He states that the Respondent No.1 had duly replied on 17.10.2023 to the notice served by the Petitioner and clarified its stance on the Movie. He relies upon the judgment of this Court in *Rakeysh Omprakash Mehra and Anr. v. GNCTD and Anr.*¹ and more specifically paragraph 44 therein to contend that in films to address social evils, it is necessary to depict such social evils itself to bring out their consequences. He states that the overall message of the Movie and the core storyline is centered around overcoming disability.

5. This Court has considered the submissions of the learned counsels for the parties and perused the record.

6. Firstly, the legal notice dated 06.10.2023 was issued by the Petitioner to Respondent No.1 after viewing the trailer of the Movie and on the basis of the contents of the trailer only. The Movie itself was released on 03.11.2023 after the grant of 'U' certification by the CBFC. The trailer as well as movie were granted 'U' certification by the CBFC.

7. The Respondent No.1 in its reply dated 17.10.2023 had expressly denied the allegations in the notice alleging that the intent of the Movie was to offend or humiliate differently abled persons. The Respondent No.1 in its reply explained the overall message of the film as intended to be conveyed by its creator. The relevant portion of the reply reads as under:

"4. Our Client is sensitive to the issues of differently abled individuals and deeply values their integrity and dignity, and the Film has been made with this sentiment. Our Client has no intention to humiliate or insult differently abled persons through their films.

5. The overall message of the Film, in fact, is one of overcoming the challenge of disability to find love and companionship. Through the Film, Our Client has endeavoured to portray the struggles faced by differently

¹ (2013) 134 DRJ 291



abled persons and their families, how they support each other, how they deal with their circumstances and find love and partnership and aims to dislodge the widely held perception that disability is an obstacle to leading a fulfilling life. The trailer is simply the introduction of the protagonists of the Film, who are differently abled, while the Film aims to convey this overall message.

6. The establishment of the characters is required to introduce their disability. Hence, the characters and their disabilities are the point of focus of the trailer, who are portrayed in a comedic manner in keeping with the genre of the Film as a comedy film. In Bobby Art International v. Om Pal Singh Hoon & Ors² (“Bandit Queen Case”), the Honourable Supreme Court of India highlighted that films that address social evils, necessarily need to depict such social evils itself to bring out their consequences. In this same light, the trailer only describes, in a humorous manner, the disability of the protagonists in order to set the stage for the narrative of the Film, and not to insult or humiliate disabled persons. Certain expressions used in the trailer are purely for dramatizing the performances of the artists playing the said characters and are in line with the Freedom of Speech and Expression guaranteed under Article 19(1) of the Constitution of India.

7. To further convey the overall message of the Film, in fact, several scenes and the core storyline of the Film are centred around overcoming disability and finding love. The Film portrays the different ways the characters cleverly outshine other persons through their elaborate schemes and planning. For instance, the lead character, Paro, despite her night blindness is shown travelling five kilometres from a train station to her house, by simply relying on her sense of hearing and spatial awareness. Similarly, another character, Yuvraj, is portrayed to be excellent at lip reading and shown able to function perfectly regardless of his hearing disability. The Film does not pity or otherwise look down on these characters but rather depicts their sense of agency, sharpness, problem-solving skills, and strong familial bonds. Accordingly, such depictions are neither derogatory nor perpetuating harmful stereotypes.

8. As referred by you in _4 of the Notice, the Honourable Supreme Court of India, in the case of Jeeja Gosh v. Union of India³, observed that “...It is the common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them...Persons with disability are most neglected lot not only in the society but also in the family. More often they are an object of pity....”. In the Film, however, the protagonists’ families do not neglect any of their differently abled members but rather take tremendous efforts to ensure their happiness, while working together as a family. The scenes that depict Harbhajan being

² (1996) 4 SCC 1

³ (2016) 7 SCC 761



misunderstood are also a reflection of the unfortunate reality that persons with speech impediments face in India.”

(Emphasis Supplied)

8. The Petitioner admittedly after receipt of the reply dated 17.10.2023 and release of the Movie on 03.11.2023 did not raise any further grievance with the Respondent No.1 with respect to the Movie until the filing of the present petition. In the writ petition, the Petitioner has not disputed the explanation offered by the Respondent No.1 in its reply contending that the overall message of the film is centered around overcoming the disability or that the Movie depicts the strength of the characters therein who are suffering from disabilities. Therefore, the primary challenge to the Movie on the ground that it is offensive to the sensibilities has not been established.

9. Secondly, it is a matter of record that CBFC has granted the Movie ‘U’ certification for unrestricted public exhibition. The Respondent No.1 in its reply dated 17.10.2023 has referred to the CBFC guidelines issued by the Central Government pursuant to Section 5B(2) of the Act of 1952, which are issued by the Central Government and are to borne in mind by the CBFC while certifying the films. The relevant guideline for the issue raised in the present petition reads as under:

“Objectives of Film Certification

- A. the medium of film remains responsible and sensitive to the values and standards of society;*
- B. artistic expression and creative freedom are not unduly curbed;*
- C. certification is responsible to social changes;*
- D. the medium of film provides clean and healthy entertainment; and*
- E. as far as possible, the film is of aesthetic value and cinematically of a good standard*



In pursuance of the above objectives, the CBFC shall ensure that

...

3. scenes-

A. *showing involvement of children in violence as victims or perpetrators or as forced witnesses to violence, or showing children as being subjected to any form of child abuse.*

B. *showing abuse or ridicule of physically and mentally handicapped persons; and*

C. *showing cruelty to, or abuse of animals, are not presented needlessly*

...

The Board of Film Certification shall also ensure that the film

A. *Is judged in its entirety from the point of view of its overall impact; and*

B. *Is examined in the light of the period depicted in the films and the contemporary standards of the country and the people to which the film relates provided that the film does not deprave the morality of the audience.*

(Emphasis Supplied)

10. The Respondent No.1 in its reply noted above has already explained the creative intent behind the Movie which as per the creator are intended at showing the strength of these characters in spite of their disabilities.

11. This Court in ***Rakeysh Omprakash Mehra*** (supra) considered the binding effect of the certificate issued by CBFC to a Movie and set out its conclusions at paragraph 44 which reads as under:

“44. In view of the aforesaid discussion, this Court concludes as under:—

i) *Freedom of expression is of inestimable value in a democratic society based on the rule of law. Our written Constitution guarantees not only freedom of speech but also freedom after speech.*

ii) *Though censorship of films constituting prior restraint is justified under the Indian Constitution, yet the censors have to make a substantial allowance in favour of freedom, thereby leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. Consequently, the film Delhi-6 being a piece of art, is entitled to protection of Article 19(1)(a) of the Constitution of India.*



iii) *The test to determine whether a movie falls foul of freedom of expression guaranteed by the Constitution is to view the film in its entirety and not to examine a few expressions and scenes of the film in isolation as sought to be done by the petitioners in the present FIR. The court will have to take into consideration what effect the film will produce on the mind of the viewer for whom the film is intended. The effect of the words and scenes will have to be judged from the standards of a reasonable, strong minded, firm and courageous man and not from that of a weak and vacillating mind.*

iv) *A film that carries a message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. It has to be borne in mind that a film that illustrate consequences of social evil, must necessarily show that evil.*

v) *The present film seen in its entirety, generates empathy for. Scheduled Castes and Scheduled Tribes. No intention to insult the members of Scheduled Castes/Scheduled Tribes community can be attributed to the petitioners in the present case. The present film in no manner supports the practice of untouchability in any manner. The acts attributed to the petitioners do not amount to preaching and practicing untouchability, within the meaning of Section 7 of the Protection of Civil Rights Act, 1955.*

vi) *Section 5-A of the Cinematograph Act and Section 79 IPC constitute an express legal bar to the institution and continuance of the proceedings initiated by the respondent no. 2-complainant. In fact, the certificate issued by CBFC furnishes a complete legal justification to the petitioner for public exhibition of the film and exonerates them from offences under IPC, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as the Protection of Civil Rights Act, 1955.*

vii) *This Court has the power to quash an FIR under investigation at the initial stage itself.*

(Emphasis Supplied)

12. As noted above, the Movie has been granted a 'U' Certificate by the CBFC, which is intended for unrestricted public exhibition. In view of the said Certificate issued under Section 5A(1)(a) of the Act of 1952; the proviso to the said Section and the settled law, this Court is of opinion that in the facts of this case, the reliefs sought against Respondent No.1 are not maintainable.

13. With respect to the relief sought against Respondent No.2 at prayer



(a) this Court finds no merit in the said relief. There are no grounds or legal basis in the petition justifying the said relief. The Central Government, as noted above, has already issued guidelines under Section 5B(2) of the Act of 1952, to the CBFC for the purpose of sanctioning film, which includes guidelines for handicapped persons.

14. The present petition along with the applications is accordingly dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 15, 2024/msh

Click here to check corrigendum, if any