

F.No. 2/10/2017-FCAT

BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNALTuesday, 1st August, 2017

Present: CHIEF JUSTICE(RETD.) MANMOHAN SARIN, CHAIRPERSON, FCAT
 MS. BINA GUPTA, MEMBER, FCAT
 SHRI SHEKHAR IYER, MEMBER, FCAT
 MS. POONAM DHILLON, MEMBER, FCAT

FOR THE APPELLANT: MR. APAR GUPTA, ADVOCATE
 MS. DISHA GUPTA, ADVOCATE
 MS. KHUSBOO RANKA
 MR. VINAY SHUKLA

IN THE MATTER OF:

M/S. FRIENDLY PEOPLE	APPELLANT
VERSUS		
CENTRAL BOARD OF FILM CERTIFICATION(CBFC), MUMBAI	RESPONDENT (NEMO)

APPEAL UNDER SECTION 5C OF THE CINEMATOGRAPH ACT, 1952 (37 OF 1952)
 AGAINST THE DECISION OF CENTRAL BOARD OF FILM CERTIFICATION (CBFC)
 IN RESPECT OF HINDI/ENGLISH DOCUMENTARY FILM "YEH JANTANTRA HAI:
AN INSIGNIFICANT MAN"

ORDER

The Appellant in this appeal assails the impugned order dated 19.05.2017, by which the Revising Committee of the CBFC held that the documentary film "Ye Jantantra Hai: An Insignificant Man" (Hindi/English) is suitable for being granted unrestricted public exhibition with parental caution, subject to cuts as mentioned hereinafter:

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Cut No.	Location	Cut Description	Guidelines
1		Submit NOC for using footage for all the characters i.e. Kejriwal, Sheela Dixit and from political parties BJP and Congress. Also submit NOC for using Loksabha footage.	2(xviii)
2	13:00	Delete the word 'Congress' & 'BJP' from the dialogue 'Wo Congress Aur BJP wale log Gadi Lagate The'	2(xviii)
3	23:35	Delete the word 'Congress & BJP' from the dialogue 'Tumhari isi Rajniti Khatam Karne Ke Liye...Aaye Bhajpa aur Congress'	2(xviii)
4	04	Delete the word Compromise from the line 'Anti Corruption Agency'	2(xviii)
5	0:33	Delete the word 'Congress & BJP' from the dialogue 'Aaj Congress Ke 16 MLA...Jinke Upar Hatya Balatkar Karne Ke Mukadme Hai'	2(xviii)
6	0:24	Delete the word 'BJP & congress' from the dialogue 'Dande Se Peeto....'	2(xviii)
7	1:22	Delete the word 'BJP & Congress' from the dialogue 'Lene Dene Wala Kaam Nahi Hona...'	2(xviii)

Upon screening of the movie, we find the location as given in the film and checking the script in the aforesaid cuts from two to seven appears at following location:-

Location of cut as per CBFC order	Cut	Actual Location in the film
13:00	Delete the word 'Congress' & 'BJP' from the dialogue 'Wo Congress Aur BJP wale log Gadi Lagate The'	0.13.03
23:35	Delete the word 'Congress & BJP' from the dialogue 'Tumhari isi Rajniti Khatam Karne Ke Liye...Aaye Bhajpa aur Congress'	0.24.19
04	Delete the word Compromise from the line 'Anti Corruption Agency'	0.04.39
0:33	Delete the word 'Congress & BJP' from the dialogue 'Aaj Congress Ke 16 MLA...Jinke Upar Hatya Balatkar Karne Ke Mukadme Hai'	0.32.30
0:24	Delete the word 'BJP & congress' from the dialogue 'Dande Se Peeto....'	Dialogue 'Dande se peeto...' not found in film and script
1:22	Delete the word 'BJP & Congress' from the dialogue 'Lene Dene Wala Kaam Nahi Hona...'	1.18.47

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2. Prior to the screening of the documentary and hearing of the appeal, one of us Ms. Shazia Ilmi, Member, FCAT recused herself from the proceedings on personal grounds.

3. The Appellant inter alia has grievances that the Examining Committee of the CBFC, before whom the film was screened on 09.02.2017, did not give adequate opportunity to the Appellant to present its case before it. It is averred that apparently the Examining Committee did not reach a consensus. Thereafter without assigning any reason, the matter was referred under Rule 24(1) by the Chairman, CBFC Board, to the Revising Committee. The Appellant addressed a communication dated 24th February, 2017 enquiring the reasons for the Examining Committee in not hearing the Appellant during the screening and providing an opportunity of representing its views.

3.1 In the event, the film was screened before the Revising committee. The Respondent Director of the movie was orally told that NOC would be required from political figures and the term 'BJP & Congress' will have to be beeped out. The proceedings culminated in the passing of the impugned order 19.05.2017, whereby the CBFC found the film suitable subject to the cuts and requirements of furnishing of NOC's as noted in para 1 of the order.

4. We had slated the film for viewing and since we proposed to hear the appeal on merits in its entirety, Counsel for Appellant, did not press the objections regarding denial of opportunity, by Examining Committee as also the non-furnishing of reasons for reference to the Revising Committee.

Theme and salient features of the documentary

5. Before considering the appeal on merits, it would be appropriate to set out facts as averred in the appeal culminating in the impugned order as well as the salient features of the film. The film is in the nature of a documentary chronicling the political debut of "An Insignificant Man" i.e. Arvind Kejriwal and the "Aam Aadmi Party" as they carve out a niche for themselves in the Indian Polity. The documentary captures the struggle to bring and usher their own propagated brand of idealism. The film gives an insider's view into Kejriwal's brand of politics whereas on one hand they are labelled as selfish and anarchic, while on the other they are credited with having brought about a major shift in the Indian political paradigm.

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6. The Appellant film makers claim that the documentary film is the result of painstaking 400 hours of footage shot over a course of two years in following the activities of Arvind Kejriwal and "Aam Aadmi Party". It is claimed to be a 100 minute film distilled, after in depth research with editing and directing. The Appellant also claims that they had also been in consultation with a law firm to ensure that the film was compliant with law and had also carried out due diligence, in which several references accusing people of offences etc. were removed. Scenes were also added to present the view points of the BJP and Congress Party, as also others in an effort to present an objective and balanced view.

7. The Appellant in the film has projected the views of Arvind Kejriwal and the Aam Aadmi Party on several vital issues exercising the minds of public e.g. High Tarriff for electricity and water. It questioned the non-implementation of the reduced electricity tariff for which an order had been signed by the Chairman, DERC but was not implemented allegedly due to the interference of the then Congress Government headed by Shiela Dixit, for extraneous reasons. Drawing inspiration from the Anna Hazare and civil society movement against corruption, the Aam Aadmi Party, launched its campaign against all pervasive corruption and attributed it to the reluctance of parties in powers to bring legislation for Lokpal, projected as essential for containing corruption in high public offices.

8. The documentary film follows activists, politicians, academicians as they go through the travails and tribulations of Indian Politics revealing their agendas, intentions and motivations. It captures their triumphs and despairs. It is a moving cinematic journey through the narrow lanes of the slums of Delhi to the closed corridors of political power for the Aam Aadmi Party. It also shows the Aam Aadmi Party functionaries sitting on Dharna and calling for mass movement to protest against the High Tariff for electricity and water. Arvind Kejriwal with his followers is shown on hunger strike, urging people not to pay water and electricity bills and drive away officials who come to disconnect the said connections for non-payment of bills.

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9. The film also carries references to the programmes and policies of BJP and Congress, the rival political parties and the criticism in scathing terms. It has references which are per se defamatory and contain allegations of nepotism and corruption. The film/documentary also contains at places the response of the said parties. However, as noted earlier the Appellant has stated that they have taken care in consultation with a law firm to be responsible for the imputations contained in the film. This aspect is being dealt with in the later part of the order.

10. Let us now consider the cuts directed by the impugned order taking into consideration the grounds put forward by the Appellant in assailing them. The requirement is to submit NOC's for using footage of all the characters i.e. Arvind Kejriwal, Sheila Dikshit and from political parties BJP & Congress. There is considerable merit in the submission of the Appellant that requiring NOC from public personalities would cull the documentary cinema, rather render the making of a documentary on political scenario neigh impossible. The Appellant in the documentary has inter alia quoted and reproduced/excerpts from speeches and/or taken from record events and information that is available in public domain. In these circumstances, requiring a film maker to obtain NOC from the affected parties or characters in the film to whom references are made, tantamounts to CBFC abdicating its statutory functions. This is neither desirable nor permissible at law.

11. Coming to the issue of prior restraint on publications, it is frowned upon by Courts and is rarely granted except in exceptional cases. These could be cases of publication of series of defamatory imputations and/or where ulterior motive or malice is apparent. It is only in such cases that a prior restraint may be granted. The rationale for not granting restraint is that public interest in knowing information concerning those in public life and affairs outweighs the consideration of protecting private interest in reputation of those who may be aggrieved. Reference may be usefully made to the decision of the Supreme Court in R. Rajagopal alias R.R. Gopal & Anr. Vs State of Tamil Nadu & Ors. (1994)6 SCC 632 632, where the court held that there was no right to apply a prior restraint upon publication of the biography of Auto Shankar at the behest of public officials who felt that it may be defamatory of them. The Court held

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that the remedy of public officials, would arise only after publication. In Charanjit Singh vs Aroon Purie, the Supreme Court dismissed an SLP filed by Charanjit Singh, former MP, who wanted a prior restraint on the basis of a questionnaire submitted to him by India Today alleging that the questionnaire itself was couched in defamatory language and the publication could not be otherwise. The Court held that there would be no prior restraint on publication, once the publisher or the magazine India Today says it pleads justification and/or fair comment. It would be seen from the foregoing that the public interest is best served in upholding the Right of Freedom and Expression rather than protecting an undeserved reputation.

12. In the instant case, the Appellant has filed an Affidavit which is annexed to this order as Annexure I. Para 6 of the Affidavit is reproduced for facility of ready reference.

"That in addition to the submissions made in the memorandum of the appeal. The documentary 'Yeh Jantantra Hai: An Insignificant Man' is the result of painstaking efforts put in by the Producer and the Director in compiling and gathering the information on going through voluminous records, we understand that the narrative may include imputations and references unpalatable to the political parties and/or even considered defamatory by them. However, we wish to reiterate that these are based on the records and reproduction of actual happenings and we bonafide belief in their veracity. We have endeavoured to remain objective, present a balanced view and have also made efforts to obtain the view point of the affected party and had given the same wherever available in a quest for truthful, balanced and objective reporting. We submit that we shall plead justification, if necessary. Further, that imputations are made bonafide as fair comments in the line of our public duty to give information on matters of public interest, on subject which have exercised the minds of the general public".

13. As noted, the Appellant claims that they have taken due care and have made the film law compliant and would be responsible for the imputations. Further, they would plead justification and/or fair comment as required. In this view of the matter, the political parties or persona named therein, if aggrieved by the film would have their remedies at law. Moreover, allegations and counter

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allegations of corruption, nepotism and various scams appear in the media frequently. Therefore, the Appellant, who have done a documentary showing the 'Aam Aadmi Party' and its growth in Delhi and takes the responsibility for the publication, imputations and the statements made therein, a fetter cannot be imposed on the screening of the film by way of prior restraint or requiring NOC's. Anyone aggrieved would have its remedy at law in view of the settled legal position as noted above.

14. Appellant as reproduced in Para 6 of the Affidavit, pleads justification and claims that they had presented an objective and balanced view as well as views of the affected parties with critical comments, if any made, were in line of the public duty to give information on matters of public interest and such a fair comment was protected. In view of the aforesaid stand, it is urged there is no basis to either call for the NOC's as required in Cut No. 1 or seek deletion as per Cuts No. 2,3,4,5,6 & 7 from the film.

Additionally, the Appellant has given tenable reasons in the Grounds of appeal for non-imposition of the cuts. These are being briefly dealt with.

Coming to Cut no. 2, deletion of the word Congress and BJP has been directed by the impugned order from the dialogue "Wo Congress or BJP wale log gadi lagate the". The scene appears in the background of a public meeting, where Arvind Kejriwal is asking the general public as to how they commute for casting the votes and then he asks whether vehicles were provided by the political parties - If transportation was provided by BJP and Congress. The response from a member of the audience is yes. The provision of transportation for the voters to the Polling Booths by political parties is quite common. Given the present level of allegation and counter allegations prevalent, it appears not to be actionable for prior restraint.

The third cut requiring deletion of the words "Congress & BJP" from the sentence "Tumhari isi rajneeti khatam karne ke liye... aaye bhajpa aur congress" connotes resolve to finish the politics and policies of BJP and Congress. It appears in a speech made by Kejriwal. It goes without saying that the Congress and BJP were the two dominant political parties and a statement by a rival political leader i.e. Arvind Kejriwal to upstage the political opponents, is a statement of intent. It reflects the intent of the political campaign and is central to the Aam Aadmi

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Party's theme and projection. It cannot be regarded as defamatory requiring excision.

As for the 4th cut of deleting the word 'compromise' from the words anti-corruption agency. The influence exercised by the Government in power, over the anti-corruption agencies has been a subject matter of wide coverage in the media and public debate. The prime investigation agency CBI had been described as a 'Caged Parrot' by the highest court. In this context, while emphasizing the need for an independent Lokpal, it is mentioned that anti-corruption agencies are compromised. This can hardly be regarded as objectionable. Besides it is integral to the context and for demanding an independent Lokpal.

As regards the 5th Cut, where the imputations regarding Congress MLA's facing criminal charges is made, Appellant has pleaded justification as per the Affidavit filed. Hence, there cannot a prior restraint or excision of the same.

The Appellant has contended that the 6th Cut mentioning deletion of the words BJP and Congress from the dialogue 'Dande Se Peeto...' is factually incorrect in as much as the aforesaid word do not appear in the script. Hence, the 6th cut is not required.

As regards the 7th Cut seeking deletion of the words 'Lene Dene Wala Kaam Nahi Hona...' (without quid pro quo nothing happens), the deletion of 'BJP & Congress' has been suggesting without appreciating the theme of the documentary. The new political party 'Aam Aadmi Party' was finding elections on the plank of removing corruption and canvassing clean politics, where the existing culture of 'Lene Dene Wala Kaam Nahi Hota Hai' would change. The deletion has been ordered on the ground that it would endanger public order and is violative of Clause 2(xvii) of the Guidelines issued by the Central Government. There does not appear to be any nexus in the imputations and the alleged apprehension of breach of public order. Besides, the film is to be judged in its entirety, we therefore, hold that the cut is not warranted. In the context the quid pro quo is not something which is exceptional and is accepted as a part of public life and polity. It does not in any manner appear to endanger public order.

15. Before concluding, we may also deal with the requirement to obtain NOC for using the Lok Sabha footage. The attention of the Appellant was drawn to the Guidelines issued by the Audio Visual & Telecasting Unit of the Lok Sabha Secretariat wherein the as per condition no. 11 - there was a prohibition on using Audio Visual recording and footage for commercial purposes. Without going into the question of the legal validity of such a condition, the Appellant in its Affidavit has voluntarily offered to delete the Lok Sabha footage scene from 04:48:00 to 04:58:00. We may mention that it would be open to the Appellant while not reproducing the footage, to give the gist of it in a voiceover. We may mention that we notice that at Page 12 of the script in the appeal paper book, a disclaimer given in the following words:

"In response to the reports that Sheila Dixshit prevented a tariff order from going ahead her office said that the allegations were unfounded because the order was not signed by all the three members of the DERC."

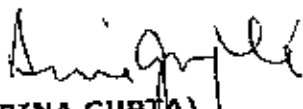
SIC

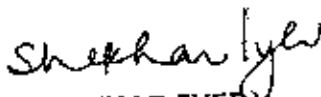
"In response to the reports that Sheila Dixshit prevented a tariff order from going ahead her office said that the allegations were unfounded because the order was not signed by all the three members of the DERC."

The same needs to be given as Voiceover rather than a disclaimer since there is no element of disclaimer involved in it. The Appellant to carry out suitable modification in script and film.

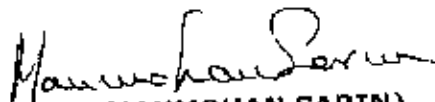
16. In view of the foregoing discussion, the appeal is allowed. The impugned order is set aside. It is directed that a 'UA' certificate be issued without requiring the cuts as directed except for the voluntary cut offered of 'Deleting the Lok Sabha footage'. The requirement, therefore, of seeking an NOC from political personages and others as a pre-condition for certification of the

documentary is held to be wholly unsustainable and not permissible at law. The Appellant shall also remain bound by the averments made in the Affidavit and filed before this Tribunal. Copy of the order be furnished to the parties forthwith.


(BINA GUPTA)
MEMBER, FCAT


(SHEKHAR IYER)
MEMBER, FCAT


(POONAM DHILLON)
MEMBER, FCAT


(JUSTICE MANMOHAN SARIN)
CHAIRPERSON, FCAT