

**F.No. 2/15/2017-FCAT**

**BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL**

Friday, 11<sup>th</sup> August, 2017

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

**FOR THE APPELLANT: MR. HARSHVARDHAN JHA, ADVOCATE**  
**MS. KIRAN SHROFF, APPELLANT**  
**MR. KUSHAN NANDY**

**IN THE MATTER OF:**

**KIRAN SHROFF**

.....

**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 FILM "**BABUMOSHAI BANDOOKBAAZ**"

**ORDER**

1. Appellant Ms. Kiran Shroff has preferred this appeal under Section 5-C of the Cinematograph Act, 1952 assailing the impugned order dated 3<sup>rd</sup> July, 2017 passed by CBFC. By the Impugned order CBFC has held the film "Babumoshai Bandoobbaaz" (Hindi) as suitable for public exhibition for adults but subject to 48 cuts, excisions, deletions, modifications and mutings as directed by the impugned order. The impugned order appears at Pages 79-81 of the appeal paper book.

2. The Appellant is not aggrieved by the film being certified for adult audience. The grievance of the Appellant is with the numerous cuts, deletions, excisions, modifications and mutings numbering 48 directed by the impugned order. It is the Appellant's contention that the cuts imposed are wholly unnecessary and not

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warranted based on the theme of the film and the characters portrayed. It is urged that the cuts would mutilate the basic theme and portrayal of the characters in the film, thus impinging upon the creativity of the Appellant and the Writer of the film. The film seeks to portray and capture the lives and situations as seen, perceived and dramatised in the film. The film is cast in the background of the rural interiors of UP. It revolves around the characters of 2 professional killers, their interaction with and the rivalries between local politicians. Further, engagement of the professional killers by politicians to serve their own goals and ends. The main character, who is one of the professional killers, is depicted as one who recalls his first homicide/crime at the age of 10, for which he was given 2 bananas as payment. The character of the professional killers reflects their social background, lack of education and non-exposure to the norms of civilised society. Given the above background, the dialogues, dialect and language used carry the prevalent expletives, cuss words without any semblance of any civility in the language. The Appellant contends that the use of expletives, abuses is part of their normal dialect and the spoken language. These are integral to the characters portrayed.

3. We have heard the Appellant's Counsel as also the Producer, who submitted that considering the prevalent norms and the context and theme of the movie, use of such dialogues and language has been accepted by the Board as well as by the Tribunal. Appellant has cited and quoted several films having similar or almost similar language and expletives, which have been granted certification. Moreover, once the movie is being granted 'A' certificate, then it is a mature adult audience which watches the film and they are unlikely to be affected by such expressions.

4. The Appellant filed a tabulated chart, wherein she has attempted to assail the individual cuts and given her version in respect of each of the cuts and deletions directed. Apart from the pleas as noticed above, which apply across the board to all the cuts, deletions, etc., Appellant has endeavoured in the remarks column and given the justification as to why the said cuts/ deletions, mutings ought not to be there. Besides urging that these do not violate the guideline as claimed in the impugned order and are in accordance with the prevalent norms and/or similar expressions, which have been allowed in movies in the past. Accordingly, the Appellant ought not to be discriminated against.

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5. Let us notice the legal position regarding the use of abusive and cuss words. The mere fact that certain films containing cuss words, expletives and abuses have been certified in the past by itself, without anything more, may not provide a ground for their retention. Reference may be usefully made to the decision of the High Court of Judicature at Bombay in Writ Petition (L) No. 1529 of 2016 titled Phantom Films Pvt. Ltd. & Anr. Vs The Central Board of Film Certification popularly referred as the judgement in the case of 'Udta Punjab'. In the cited case, the High Court of Bombay allowed use of cuss words finding same to be portraying the reality of the characters that were natural to the theme of the film and were allowed. The Court observed "It is therefore not proper to hold that merely because in some films such words or abuses, expletives have not been deleted and permitted to be retained that course must be followed". It is the story, its theme, backdrop and setting in which it is made, the message it seeks to convey and its entertainment value would have to be judged by applying the parameters of Section 5-B and of the Guidelines. This Tribunal has followed the above approach in its decision in the case of 'Lipstick Under My Burkha'. The principle evolved is that if the expletives, cuss words used are required for giving full expression and effect to the expression and emotion or the depiction of the character keeping the background, the same may be allowed. In the film under consideration as noted by us, we are concerned with professional killers with lack of education, to whom life has no meaning and their upbringing has hardened them. Sex appears as a basic raw function bereft of love and emotion, except when one of them is shown as falling in love.

6. We may also note that while considering the cuts and deletions to be imposed, a factor to be considered is that they do not mutilate or adversely affect the theme or result in losing effect of portrayal of the characters. In this process, it is the entirety of the film which has to be kept in mind while considering the retention or excision of any individual expression.

7. The film was screened before us on 3<sup>rd</sup> August, 2017, when during the hearing, we made known to the Appellant some of our concerns as to the portions appearing to be objectionable. The Appellant thereupon sought time to revert and offer voluntary cuts for which time was granted.

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8. The Appellant filed on 8<sup>th</sup> August, 2017 an affidavit dated 7<sup>th</sup> August, 2017 together with the attachment 'Exhibit-A' containing a list of deletions, modifications, mutings offered to be carried out by the Appellant in the film.

9. Let us consider the cuts, deletions and mutings directed by the CBFC. The Appellant has not separately given the "Grounds of Appeal" in the Memorandum of Appeal. However, in the 'Remarks Column' the justification/explanation is given for retention of the dialogues and the scenes. The same are being treated as "Grounds of Appeal" against the impugned order.

10. We find that the Appellant has made out a plausible case against deletions, cuts and excisions of the dialogues and scenes, except the ones which are otherwise being deleted/modified. As already noticed, a greater latitude and liberal approach is to be adopted, where adult certification is being granted. The adult audience is expected to be mature and capable of deciding what is wrong and right for them and whether to view or not to view the same. Therefore, unless there is a gross violation of the guidelines keeping in mind the prevalent and acceptable norms which have over the years liberalized from adherence to strict norms of yesteryears. This is especially so, when the characters have been portrayed as hardened criminals and local politicians to whom sacrifice of few lives does not matter, as long as it meets their ambition and helps in retaining power. Thus, in such cases, the creativity of a film maker has to be provided a free expression on a broad canvas.

11. Having considered and gone over the impugned order as well as the justification and grounds set forth by the Appellant, we are of the view that the film may be granted 'A' certification subject to the under mentioned cuts, deletions which the Appellant has also accepted to carry out.

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For sake of clarity these cuts are being reproduced in the order itself:-

S.NO.	CBFC TCR	ACTUAL CUT TCR	ORIGINAL	MODIFIED
1.	00.06.29 to 00.06.48	00.06.35.11 to ...00.06.42.20	Love making sequence	Voluntary deletion of 7 seconds of love making sequence
2.	00.10.10	00.10.10.02 to 00.10.11.16	To add smoking scroll	Add smoking scroll
3.	18.38	18.34.13 to 18.35.20	Chup bhosdike	Voluntary change to 'Chup Kar Bae'
4.	21.15	21.11.21 to 21.13.21	Tumhare free ki maa ka ghanta	Voluntary change to 'Tumhare free ka bajaye ghanta'
5.	23.00 to 25.00	24.03.07 to 24.04.13	Love making sequence	Voluntary deletion of 01.06 seconds love making and replaced with another shot.
6.	1.24.25	1.30.39.12 to 1.30.47.01	Haraamzaade, saale Madarchod.	Voluntary change to 'Haraamzaada, saala do kaudi ka haraami' and cut word 'Madarchod'
7.	1.24.25	1.30.39.12 to 1.30.47.01	Haramzaade saale Madarchod.	Voluntary deletion of word 'Madarchod'
8.	1.32.15 to 1.32.31	1.38.14.00 to 1.38.23.01	Love making sequence	Voluntary deletion of 9 seconds of love making sequence.
9.	1.49.03 to 1.49.34	1.52.35.09 to 1.54.21.03	Love making sequence	Voluntary deletion of 1minute, 46 seconds of love making sequence.

Further voluntary cuts as offered and undertaken vide its letter of 11<sup>th</sup> August, 2017 are:-

S.NO	CBFC CUT NO.	CBFC TCR	ACTUAL CUT TCR	ORIGINAL	MODIFIED
1.	14	43.11	42.54	Jisko sehlakar khada kiya...usine pichwade mei ghusa diya'	Jisko sahalakar bada kiya...usine pichwade mein gusa diya
2.	21	1.03.07	1.03.06	Tumhara aand sehlane gaye the	Tumhara Taand sahlane gaye the

MR

3.	22	1.04.37	01.04.35	Aandwa phodenge	Taandwa phodenge
4.	36	1.28.50	01.34.42	Maa ke petikot mei	Lugai ke peticot mei
5.	Delete the word 'Madarchod' wherever it appears in the movie or in the script.				
6.	Delete the word 'Bhosdike' wherever it appears in the movie or in the script.				

12. Before parting with the appeal, we may record that a communication dated 10<sup>th</sup> August, 2017 has been received from the Chairman, CBFC addressed to the Chairperson, FCAT stating that the version of film as shown to CBFC for certification appeared to be different from the one being shown to the Tribunal. This was based on the film shown to FCAT not carrying the Time Ticker throughout, while it ran throughout in the film as shown to the CBFC. Secondly, the Chairman, CBFC objected to the liberty provided to the Appellant for making voluntary cuts based on his own perception of the Act and the Rules.

13. All Appellants filing an appeal before the Tribunal are required to give an undertaking that the script and the film presented in the appeal is the same as was presented to the CBFC for purposes of certification. Any breach or violation is viewed seriously by the Tribunal. It is for this reason that in the Interim Order dated 3<sup>rd</sup> August, 2017, the attention of the Appellant was drawn to the Ticker Time being different and explanation sought for the same. The Appellant in pursuance thereto has filed the tabulation giving the cut insertion TCR in the CBFC's order and the actual TCR. We find that the cuts as directed by the CBFC and those voluntarily offered are clearly identifiable. Further, the Appellant has filed a certification from M/s. Scrabble Digital Mumbai, i.e. the company which prepared the DCP that the films screened before the CBFC and the FCAT are the same. This is based on the KDM provided by them i.e. the password for screening of the films. Therefore, this is a non-issue.

14. As regards the aspect of giving liberty to offer voluntary cuts, we may observe that the Tribunal has observed earlier also, that in most of the appeals preferred before it, a grievance is made of inadequate hearing and opportunity not being provided by CBFC, in particular the option to offer voluntary cuts.

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In the order of the Tribunal in Appeal no. 1/2017 titled Khalid Kidwai Vs. The Central Board of Film Certification, in respect of the movie 'Rambhajan Zindabaad', the following approach had been commended to the CBFC for adoption:-

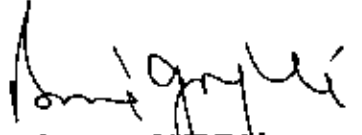
"We would commend to the CBFC that if a movie examined by it is capable of receiving certification with certain cuts, deletions, modifications and/or additions in the disclaimer, the CBFC may consider apprising the appellant of the same. Such an approach would save the appellants and the film producer avoidable expense and appeal being preferred before the FCAT, which of late have shown a rising trend. The film producer/applicant would also have the benefit of receiving relief in the first instance itself. We would recommend the adoption of above approach by the CBFC".

We are dismayed to notice that far from adopting the approach as commended by this Tribunal, which is expected as a matter of judicial propriety and discipline, the CBFC continues with its rigid stand against liberty to offer voluntary cuts allegedly on a misconceived ground that the same is against the spirit of the Act and the Rules.

15. It is to be noted that the Tribunal is exercising statutory appellate powers and the jurisdiction as conferred by the statute. It does not lie in the province of the Chairman, CBFC to advise the Appellate Authority that the Appellant should not be afforded the liberty to offer voluntary cuts. This is especially so, when observations to the contrary and the approach commended to be adopted by CBFC has been laid down in the orders passed. This is more so when CBFC was duly provided an opportunity in terms of Proviso to Section 5D(10) for presenting its view point during the hearing of the appeal. The CBFC as in the instant case choose not to appear and present its objections during the hearing on 03.08.2017 and has subsequently chosen to address the on the view point during the hearing and subsequently has chosen to address the communication dated 10.08.2017. The above communication is deprecated.

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16. The appeal is allowed and the CBFC is directed to grant an 'A' certificate to the film titled "Babumoshai Bandoobaz" (Hindi) subject to cuts as given in Para 11 of the above order. Copy of the order be furnished to both the parties forthwith.

  
(BINA GUPTA)  
MEMBER, FCAT

  
(SHEKHAR IYER)  
MEMBER, FCAT

  
(JUSTICE MANMOHAN SARIN)  
CHAIRPERSON, FCAT