

**No. 2/3/2017-FCAT****BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL**26<sup>th</sup> September, 2017

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

**FOR THE APPELLANT: MR. RISHI AGGARWAL, ADVOCATE  
MR. ANUJ MALHOTRA, ADVOCATE**

In the matter of:

<b>SAROJ ENTERTAINMENT</b>	.....	<b>APPELLANT</b>
	<b>VERSUS</b>	
<b>CENTRAL BOARD OF FILM CERTIFICATION, MUMBAI</b>	.....	<b>RESPONDENT</b>

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 FEATURE FILM "**GAMES OF AYODHYA**".

This is an appeal preferred by the Appellant under Section 5C of the Cinematographic Act 1952, impugning the order refusing certification to the film "Games of Ayodhya". The impugned order dated 25.01.2017, of the Examining Committee refusing certification gives the reasoning therefor as under:-

The film deals with the controversial issue of Mandir Masjid in a provocative manner. There is plenty of defamation of individuals and body of individuals in the film. Entire picturization is done in a way that it can affect communal harmony. Visuals and dialogues are potentially harmful to the peace, unity and communal harmony. State security is jeopardized and

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public order is endangered, if the film is permitted for exhibition. It violates guidelines 2 (xiv), 2 (xvi), 2 (xvii) and 3 (i) of Cinematograph Act. Hence, refused for certification.

2. That after scrutiny and registration of the appeal, notice was issued to the CBFC giving opportunity of being heard in the matter. The CBFC furnished the comments but did not appear during the hearings.

3. The appeal was heard on 17.04.2017 and 15.05.2017. After hearing the Counsel, the issues arising in the case as also the concerns of the Tribunal were made known to the Appellant, who sought time to revert. The Appellant was sent a reminder on 06.06.2017, giving opportunity to cite authorities in support of the contentions raised and addressing the concerns of the Tribunal on or before 05.07.2017. During the hearing, Counsel for the Appellant submitted that he would support his submission that certification to the film under the Cinematograph Act and Rules could not be refused on ground of breach of sub judice rule and was granted time to support his submissions with judicial pronouncements. The Appellant tendered the same on 19.08.2017, when his Counsel appeared in another matter and thereafter the matter was reserved for orders.

4. The Appellant's case in appeal is that the film is thematically cast in the back drop of a middle aged journalist, who wants to atone and repent for his mistake in the past. His mistake had resulted in riots among hindus and muslims and many casualties. The film's hero Sunil Singh, who is also the Director of the movie, in a flash back captures the events of 90's, when he was a 27 year old press reporter. It shows him as a young man in love with Nilofer a college going muslim girl. The film while narrating the love story of the press reporter journalist with "Nilofer" entwines and unfolds itself by capturing the riots during the campaign for the Mandir, which culminated in the demolition of the Babri Masjid. The Appellant contends that film examines the various facets of historical events and the interplay of vested interests operating eg: of the politicians and religious leaders and those of communities. The Producer of film as a result of the research and study done by him seeks to give the different perspectives to the highly disputed and controversial facts and issues in the form of debates and

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dialogues between the press reporter, his father in law, the librarian and one Shastri Ji and other knowledgeable persons.

5. The Appellant in the grounds of appeal urges that there is nothing in law which prohibits a film maker or producer from utilizing and combining facts in public domain with fiction. He refers to Rule 2 of the Cinematographic Act (Certificate) Rules. The rule defines feature film as meaning fictionalised story. The use of the word fictionalised itself implies a mixture of fact and fiction. Accordingly, it was urged that the Appellant was well within his rights to give the perspective and understanding of the controversial facts and combine them with his fictional love story with the muslim girl, whom he had married.

6. Ld. Counsel for the Appellant has assailed the impugned order as having been passed in a mechanical manner and in violation of the fundamental rights of the Appellant under Article 19 (1) g. The denial of certification has resulted in huge monetary loss to the Appellant, affecting his credibility in the film industry. The Appellant denies that the controversial issue of Mandir has been shown in a provocative manner. It is not uncommon to have certification of love stories picturized in relation to a specific and important event which took place in history. Hence, the appellant has illegally been discriminated against.

7. The Appellant submits that the Respondent has misunderstood and has grievously erred in holding that the picturization can affect communal harmony or that there was defamation of individuals therein or that the sentiments are hurt in a provocative manner.

8. Appellant further submitted that Respondent failed to even suggest any reasonable deletions, cuts. Rather it chose to declare the entire film as not suitable for public exhibition. The same is against the provisions of the Cinematograph Act in as much as the provisions are meant for certification of films. Besides the impugned order does not illustratively or otherwise disclose how the guidelines 2 (xiv), 2(xvi), 2(xvii) and 3 (i) have been violated. It is contended that film is not defamatory of any individual or body of individuals. The film does not either instigate or incite or tend to

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disturb the peace, unity and communal harmony. Hence, there is no question of endangering state security or endangering public order.

9. The Ram Janambhumi and the Babri Masjid dispute has even earlier been subject matter of documentary films. The events following the demolition of the Babri Masjid structure and the resultant riots are a sad chapter in the history of the nation.

10. These events have earlier also been picturized in the form of documentary after the riots. A documentary film "Ram Ke Naam" was produced by Mr. Anand Patwardhan. The documentary received public acclaim and national award as well as the best documentary for the year 1993, by the jury of the Film Fare awards. These were apart from international awards and recognition received by it. Anand Patwardhan was aggrieved as the film was not being telecast on the Doordarshan despite Dir. Gen. Doordarshan having been requested to do so. He filed a writ petition titled Anand Patwardhan Vs Union of India and others bearing no. 1958 of 1994 in the High Court of Bombay. Vide judgement dated 06.01.1997, reported at 1977 SCC Online Bom 3, the writ petition was allowed. The observations and discussion in judgement of "Ram Tere Naam" are of significance and relevance for the present appeal and are therefore noticed in detail.

11. The Petitioner therein had claimed that the documentary film was an attempt to stem and counteract the fissiparous and sectarian tendencies and to promote integrative forces in the Indian society. The documentary was capable of making a signal contribution for the unity and integrity of India, in the present milieu of strife and bigotry. The judgment also discussed the right of citizens to be informed and enlightened about important developments relating to the dispute of Babri Masjid and Mandir, which had affected the public and democratic character of the Indian society. It was claimed that the documentary sought to promote harmony and spirit of common brotherhood among people of India transcending religious, linguistic, regional or sectional diversities. It was part of fundamental duties to disseminate such values and information by film and other medium. Similar claims are made as for the theme and message sought to be conveyed.

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12. The said documentary and the present film both seek to trace the history and the genesis of the Ayodhya conflict, from the time the Mosque was built in 1528 to the revival of the conflict around the time of independence. In December, 1949, an idol of Lord Ram was installed, which resulted in the area being declared disputed and the Mosque being closed. The earlier documentary critically examined the theory circulated to the masses through video films to show the idol of Lord Ram descending from heaven. The interview of the old Mahant of Ayodhya, who was one among those, who placed the idol of Lord Ram inside the Mosque, was shown. The Mulla/ Kazi, who had been conducting Namaz at the Mosque till stopped by the orders of the District Magistrate was also interviewed. The impact of Rath Yatra undertaken was noticed. It commented upon the lack of understanding and knowledge of the activists and worshippers.

13. The documentary "Ram Tere Naam" dealt with how blind faith has been exploited for aggrandisement of political interest and expediency with the unsuspecting masses being made victims of such a propaganda. The film effectively portrays destruction in terms of human life, property and loss, following the demolition. The view point of common man and vast majority were also sought to be projected. A common hindu was quoted as saying "would not we feel said if someone came and destroyed our Mandir, therefore how can then we approve of some other place of worship being demolished". The pujari of Ram Temple at Ayodhya was projected in the documentary as the moderate voice of liberal Hinduism. It is significant to record that the documentary had received U certification by the Central Board of Film Certification. The grievances of the Producers was that the documentary though carrying a strong message for unity and secular India was being denied arbitrarily and in an unjust manner from being telecast in the Doordarshan. As noticed, the writ was allowed with appropriate directions to the Doordarshan for its telecast.

14. The Court also examined in the above case the judicial pronouncements, which were in favour of freedom of expression under Article 19 (1) (a) as being a pre-eminent right in a democratic government and the touch stone of individual liberty. The Supreme Court has held that the pre-eminent position of right to freedom of expression even in situation

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where reasonable restriction are required in the larger interest of the community under article 19 (2), the striking of balance between freedom of expression and social interests is only to be done when the anticipated danger to community interest is not remote, conjectural or farfetched. It should have proximate or direct nexus akin to "spark in a powder keg", as observed in *S. Rangarajan Vs P. Jagjeevan Ram* 1989 2 SCC page 574.

15. Reference may usefully be made to the judgment of Hon'ble Justice Goda Raghuram, J. in the *Lakshmi Ganesh Films, Hyderabad and others Vs. Government of A.P. and others* reported at 2006 SCC Online AP 489. In this case, the movie titled 'The Da Vinci Code' was granted certification by the CBFC. However, by an order passed under Section 8 of the AP Cinema Regulation Act 955, the exhibition of the movie was suspended in English, Telugu and other languages in the entire State. The suspension came about when Minority Organizations, in general and Christian organizations, in particular, sought a ban on the exhibition of the movie on the ground that it will not offend religious sentiments but lead to demonstrations, disturb peace and tranquillity in the State. The reports from the Government agencies indicated that some Christian groups may take recourse to agitational activities if the film is released and that untoward incidents may take place. The Government after considering the reports, complaints from Minority Community, reached the conclusion that the exhibition of the film 'The Da Vinci Code' is likely to cause breach of peace and hurt religious sentiments of Muslim and Christian Community, which may lead to demonstrations, disturb peace and tranquillity in the State.

16. The movie was based on an adaptation of the Dan Brown's novel 'The Da Vinci Code' was a work of fiction woven around an alternate interpretation of certain aspects of Christian belief. It represented that the Catholic Church had for over 2000 years suppressed the truth regarding Mary Magdalene and Jesus in respect of the bloodline of Christ. Mary Magdalene was of Royal descent and had married Jesus Christ, a descendant of the Royal house of David. She was pregnant at the time of the crucifixion, later tied to Gaul where she was protected and sheltered in Marseille and thereat gave birth to a daughter by name Sara. The blood line of Jesus and Mary Magdalene was the Merovingian Dynasty. This ran

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counter to the popular general catholic belief regarding virgin Mary i.e. mother Mary being virgin. The picturization would hurt the religious sentiments of the Christians. The Court had screened the film and observed that the executive authority passing the order under Section 8 had not even seen the film. It held the restriction to be extravagant, arbitrary, casual and wholly irrational exercise of a very sensitive and responsible executive power i.e. regulation of a cherished value and guaranteed freedom of speech and expression.

17. The Court observed that the freedom of speech and expression is an inalienable component to the fulfilment of rationale human personality. Intrinsic to such fulfilment is the Right of an individual to be informed about facts, ideas and developments about competing, even combative doctrines, theories and viewpoints on religious, social and political institutions and the personalities which influence these institutions. The right to be informed not only about the orthodoxy and dogma but about heterodoxy and counter-dogma as well. The choice of what information to receive is a protected individual choice, subject to State control and regulation only for compelling Governmental purposes within the defined spectrum of purposes qua Article 19(2). It was further observed that "We live in an information and communication obsessed period of human civilization. Contemporaneous man is therefore subject to voluminous and diverse printed and audio-visual material. Such material may be obnoxious, may constitute a visual clutter, may offend one's sensibilities, offensive to deeply held beliefs. The question therefore arises, a question that goes to the heart of the discourse as to freedom of speech and expression. The answer to the above question is in the negative as there would hardly ever be universal approbation of the content of the speech and expression.

18. In view of the law and dictum as laid down in Shri Anand Patwardhan Supra and Lakshmi Ganesh Films above, the pre-eminent position of the right of freedom and expression is well established.

19. Let us examine critically, whether the present film, its script, dialogues and visuals can be considered as being provocative in the nature of "spark in the powder keg" or the picturization of the present film of the

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Mandir Masjid dispute is in a provocative manner so as to affect the communal harmony and jeopardise the security and endanger public order.

20. The movie has been screened and watched by us. We have also gone through the script carefully. In the earlier part of the order, we have narrated how the producer has recapitulated the Babri Masjid episode, entwined with his love story as a young journalist, he visits Ayodhya and Faizabad after 18 years from the 90's, when with passage of time there was a good possibility of objectively evaluating and assessing the factual aspects and the causes of the unfortunate incidents leading to riots, spreading of ill will and strife among the communities. The presentation of the theme of the movie is in a balanced objective manner, where the producer recognizes that there should be no exploitation in the name of religion or community, especially to spread hatred and ill will. References are also made to Librahan Commission Report. It is mentioned that former Chief Minister and other BJP leaders wanted the report to be consigned to waste paper basket, possibly because it indicted them. Here again, the Producer adds a note of caution, observing that no reasonable conclusion should be reached without discussing and knowing the version of the BJP leaders. The film recognises that objectivity and intellectual honesty have been compromised at the altar of political expediency and power aggrandizement. However, in this background the author by adopting the medium of doing research and discussions with Librarian, scholars and other knowledgeable persons, seeks to compile and present, the various facets of the Babri Masjid Mandir dispute and the developments at Ayodhya, which culminated in the demolition of the Babri Masjid / the disputed structure and the resultant riots. The film also depicts the producer, who had married a Muslim girl, whom he loved but due to non-acceptability of such liaisons had to give away his son to the maternal grandparents to be raised as a Muslim. The producer and his wife both are poignantly pining for him.

21. The narrative of the film, its voice overs and dialogues of various characters seek to give the historical perspective of the demolition of the Mandir and making of the Masjid by Babur's Commander in Chief Mir Baqi in 1528. The installation of the idol of Ram Lalla. The FIR lodged by



members of the muslim community. Worship being performed by priest without access to the devotees and the locking of the structure, followed by its unlocking during the Rajiv Gandhi regime. It projects the anguish of some of the members of muslim community, who loved India and had adopted it as their nation with aspirations of having the same rights and privileges but felt disappointed by the developments.

The film also effectively presents how political leaders for the sake of their vote bank and political interests seek to exploit religious sentiments. It is noticed that in the firing in the agitation and riots only the common men from the respective communities were sufferers. Leaders were conspicuous by their absence in the category of casualties or those injured. In fact, the entire narrative and attempt appear to present the divergent perspectives and viewpoints, while spreading the voice of sanity for the purpose of maintaining peace and harmony. The Appellant claims to have presented the divergent viewpoints in an impartial manner leaving the viewer to draw its own conclusion. However, even if it is felt by some that the Appellant has not fully reflected the aspirations of the majority community or the latter's disappointment in not being able to have the temple built at the Ramjanam Bhumi, which is an article of faith with it, it is the exercise of freedom of expression granted to the Appellant as well as all the citizens under the Constitution of the country.

22. We may notice that the film depicts the Rath Yatra, which was an important event to galvanize Hindus and build up fervour in favour of the construction of the temple at Ayodhya. There is also the belief that the underlying purpose was also to consolidate the Hindu vote bank for political purposes. The political opponents had opposed the Rath Yatra of Shri Lal Krishan Advani. This issue has been in the public domain. We do not find anything objectionable in the manner in which this has been portrayed in the movie. Similarly, the scenes of violence have not been unduly prolonged or elongated and have been shown in a manner so as to depict the reality of the situation in which there were injuries and casualties. There are no gory scenes of violence. As observed earlier, our attention has not been drawn to any particular specific scene which can be said to be specifically violating any of the guidelines. The impugned order neither

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discloses any defamatory imputation nor we have noticed any in the script which is perse defamatory. The Appellant in any case states that they would plead justification and fair comments being made bonafide.

23. We have also examined the matter from the perspective whether the exhibition of the film would violate the sub-judice rule. This is in the background of trial of number of prominent leader among others Sh. Lalkrishan Advani, Murli Manohar Joshi, Uma Bharti and Kalyan Singh. We do not find anything in this script, which either comments upon the guilt or innocence of these accused for the offences accused or which can be said to interfere with the due course of justice or judicial process. We do not find either in the script or in the dialogues anything attributed to or spoken which can be taken as causing prejudice or interfering in the course of the administration of justice or of fair trial so as to interfere with the due course of justice. We are conscious that in case the film seeks to present facts concerning the accusations against the accused or other material facts in a manner which will prejudice the judicial proceedings or interfere with the administration of justice then in such situations the exhibition of the film can be deferred as has been laid down by the Supreme Court in *Mushtaq Moosa Tarani Vs Govt of India & Ors.* 2005 SCC Online Bom 385. In the cited case the exhibition of the film 'The Black Friday' had been deferred till the judgement in the matter. However, in the present case, there were no such references to any of the accused or in the film otherwise which would invoke the sub-judice rule.

24. The film to sum up is an attempt by the Producer to present the different perspectives which is done through the views expressed by the various participants in the discussion. The Producer has attempted by resorting to a flash back and a discussion among persons representing the clergy, research scholars, librarian and others knowledgeable about the history of Masjid Mandir dispute so as to present the various facets which may not be fully known based on their study and research.

25. The Appellant is being directed to give a disclaimer as under for the purposes of grant of certification. The disclaimer shall be exhibited at the beginning for a minimum of ninety seconds and shall also be read in the voice over.

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**Disclaimer**

The film is in respect of the Mandir Masjid dispute which has exercised the minds of the public for several years now. The film depicts the origin of the dispute, tracing its developments through various stages. The film examines comprehensively facets of the issue including use of religious sentiments, galvanizing and mobilizing support by vested interests for their own benefit. The role of political, religious and leaders of the community in utilizing the Mandir Masjid dispute for advancing their own goals. The Producer of the film has sought to present the divergent viewpoints in an objective manner by putting forth the respective viewpoints in the form of dialogues and discussions between characters who are knowledgeable and /or have done research on the subject by use of voiceovers, relying also on the facts and recordings available in public domain. The film producer has attempted to present in a cogent manner the various perspectives impartially and shall not be deemed to have taken any partisan position on the issue.


The film maker declares that the characters shown in the film are fictitious and bear no resemblance to any person living or dead and similarity, if any is purely co-incidental. The film and the dialogues as presented are not intended to show any disrespect or denigrate anyone. The presentation is an attempt to spread the message of brotherhood and comity among different communities transcending religious, linguistic or regional differences and diversities and for striving towards communal harmony.


26. In view of the discussion in preceding paras, we have reached the conclusion that the film cannot be described as narrating the story or its dialogues in a provocative manner and disturbing or spreading communal strife, hatred or ill will. Besides, what is given in the narrative form, most of it already in the public domain and has been published and / or screened. The impugned order has not pointed out any specific scene, dialogue or part of script of the film which would tend to disrupt peace and communal harmony or endanger security and public order. On a mere apprehension of disturbance of public order without any supporting basis, the right to freedom of expression guaranteed under the Constitution cannot be curtailed.

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27. Accordingly, we are of the view that impugned order of the CBFC rejecting certification deserves to be set aside. The same is set aside. We direct issuance of UA certification with parental caution to the film "Games of Ayodhya" upon disclaimer as directed being incorporated in the film.

28. The appeal is allowed with the above directions. Copy of the order be furnished to both the parties forthwith.

  
(BINA GUPTA)  
MEMBER, FCAT

  
(SHEKHAR IYER)  
MEMBER, FCAT

  
(SHAZIA ILMI)  
MEMBER, FCAT

  
(JUSTICE MANMOHAN SARIN)  
CHAIRPERSON, FCAT