

**BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL**

Friday, 26<sup>th</sup> May, 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: MS. MADHURI MALHOTRA**  
**MR. BISHWARUP CHAKRABORTI**  
**MR. NARESH CHAHAL**

**IN THE MATTER OF:**

<b>SONY PICTURES PVT. LTD.</b>	<b>.....</b>	<b>APPELLANT</b>
<b>VERSUS</b>		
<b>CENTRAL BOARD OF FILM CERTIFICATION(CBFC), MUMBAI</b>	<b>.....</b>	<b>RESPONDENT (NEMO)</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 ENGLISH FEATURE FILM "**THE DANISH GIRL**"

**ORDER**

1. The appellant has preferred this appeal under Section 5-C of the Cinematograph Act, 1952 assailing the order dated 3<sup>rd</sup> April, 2017 herein referred to as the impugned order by which the CBFC declined certification under category 'U/UA' as sought by the appellant. The appellant states that a certificate dated 8<sup>th</sup> Jan, 2016 under category 'A' has already been granted by the CBFC to the film 'The Danish Girl'(English).

2. The appellant while seeking 'U/UA' certification had offered 14 voluntary cuts in the scenes and dialogues to make the film eligible for grant of 'UA' certification. In addition, changes were made in the disclaimer for smoking. The appellant verily believed that with the aforesaid voluntary cuts, it had

*MS*



removed all scenes and dialogues that could be perceived as being for an Adult audience.

3. The Respondent Board passed the impugned order which records the following as reason for refusal of certification in unrestricted category 'U/UA' to the film.

"Theme itself is quit (sic) mature, complex relation, conversation and complex subject which needs mature persons only. Hence, refused for 'U/UA' under guidelines 2(vii), 2(ix), 3(i)."

3. The appellant has set out exhaustive grounds of appeal. The impugned order is assailed as perverse, without application of mind. Besides, being passed in violation of principles of natural justice as the appellant allegedly was not given an opportunity to put forward its case.

4.(i) We have heard Representatives of the appellant, who have submitted that the film 'The Danish Girl' was intended to be shown on their channel on 26<sup>th</sup> March, 2017 but could not be shown because of refusal of certification in UA category. The film has won critical acclaim worldwide and was screened in the 72<sup>nd</sup> Venice International Film Festival. It was also shown in the special presentation sections of the 2015 Toronto International Film Festival. The film has received widespread acclaim and nominations for major acting awards.

(ii) The film is a 2015 British-American biographical romantic drama film, directed by Tom Hooper. It is based on a fictional novel of the same name by David Ebershoff and loosely inspired by the lives of Danish painters Lili Elbe and Gerda Wegener. The film stars Eddie Redmayne as Elbe, one of the first known recipients of sex reassignment surgery. Sex reassignment surgery is a surgical procedure by which a transgender person's physical appearance and sexual characteristics are altered to resemble that which is socially associated with their identified gender and is a part of a medical treatment for gender dysphoria in transgender people. It is a story of a recipient of sex reassignment surgery which cannot and should not be treated as degrading or denigrating women.

(iii) It was submitted that the film does not contain any obscenity, vulgarity or any denigration or depravity of women in any manner.

(iv) The impugned order fails to recognize that the film had already been certified for theatrical purposes and as a result of the voluntary cuts all



objectionable scenes, which could come in the way of grant of 'U or UA' certification had been removed. The appellant urged that the Board grievously erred in refusing certification on the ground that the "Theme itself is quit (sic) mature, complex relation, conversation and complex subject which needs mature persons only." The above fails to comprehend the contemporary and prevalent standards of social growth and awareness of these issues.

5.(i) Reliance was also placed on the judgment of the Supreme Court in National Legal Services Authority Vs Union of India reported at 2014 (5) SCC 438 cases. The Supreme Court in the cited case granted recognition of gender identity to the transgender community by declaring the availability of "Third Gender" to them. This protected and safeguarded their interests and made human rights and fundamental rights guaranteed to them under the constitution.

(ii) By such recognition, the transgenders would be able to enjoy their rights of which they have been deprived for want of this recognition. A human rights approach was recommended by the Supreme Court instead of being subjected to cruelty, pity or charity. The Supreme Court noted that there is a limited public knowledge and understanding of the same sex, social orientation and people whose gender identity and expression were incongruent with their biological sex. This has resulted in their social exclusion.

(iii) In the above background and the legal recognition and wide spread awareness of life and concerns of lesbians, gays and the transgenders, it would be unfair to curtail a film projecting these issues merely on the ground that this is a complex subject. Especially, in the present film, the travails and sufferings of the husband who struggles to find his own identity, believing that he should be a woman. His wife empathizes with him and supports him, remaining by his bed side all through during his sex reassignment surgery in the 18<sup>th</sup> century. There is nothing in the film, which is vulgar, obscene or of depravity of the women or which denigrates them. The film judged in terms of guideline 3(i) is an excellent depiction of the problems of the transgenders and their struggle for adjustments in life. It cannot be said to be violative of the guidelines.

6. Having noticed that there is nothing in the film after the voluntary cuts which can be said to be violative of the guidelines as mentioned in the impugned order. We may also notice that the Appellant has drawn our attention to several



films dealing with and involving similar subjects, which have been granted UA certification for satellite release and shown on TV. These are :

<b>Movie</b>	<b>Last Airing Date</b>	<b>Channel</b>
Boys Don't Cry	July 13, 2016	Star Movie Select
Brokeback Mountain	May 14, 2016	Movies Now+
Milk	December 03, 2016	Movies Now+
D Train	September 17, 2016	Sony Le Plex

<b>TV Shows</b>	<b>Airing Date</b>	<b>Channel</b>
MTV- Big F	on air	MTV
Shakti-Astitva Ke Ehsaas Ki	on air	Colors

The Appellant therefore urges that the film "Danish Girl" should not be subjected to a different treatment or judged by applying different norms.

7. The film has been viewed by us including the voluntary cuts, which have been made. At the outset, we wish to record that the film after the voluntary cuts does not contain any objectionable scenes which could render it only fit for an Adult audience only.

8. We wish to add that the film is remarkably well directed. The actors have excelled in portraying their respective roles which have been performed with great sensitivity and feelings.

9. We find merit in the submission of the appellant that the refusal for certification on the ground of guidelines 2(vii), 2(ix) and 3(i) is non-sustainable. Guideline 2(vii) requires that human sensibilities are not offended by vulgarity, obscenity or depravity. There is nothing in the film by which human sensibilities are offended by vulgarity, obscenity or depravity.

10. We are of the view that there is no question of a film offending guideline 3(1) rather judged in its entirety from the point of overall impact, it is a film which has received international recognition and is on a subject which is topical and because of the modern times our youth is also aware of these issues. We are of the view that the impugned order is not sustainable and the appeal deserves to be allowed.

3



In view of the foregoing discussion, we are satisfied that the film deserves to be granted certification under 'UA' category with parental caution. Ordered accordingly.

*Shekhar Iyer*  
(SHEKHAR IYER)  
MEMBER, FCAT

*Bina Gupta*  
(BINA GUPTA)  
MEMBER, FCAT

*Poonam Dhillon*  
(POONAM DHILLON)  
MEMBER, FCAT

*Man Mohan Sarin*  
(JUSTICE MANMOHAN SARIN)  
CHAIRPERSON(FCAT)