

F.No. 2/1/2018-FCAT

BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL25th January, 2018

**Present: CHIEF JUSTICE(RETD.) MANMOHAN SARIN, CHAIRPERSON,
FCAT
MS. SHAZIA ILMI, MEMBER, FCAT**

**FOR THE APPELLANT: MS. AISHWARYA BHATI, ADVOCATE
MR. JAIDEEP SINGH, ADVOCATE
MR. VISHWAJEET SINGH, ADVOCATE
MR. DHIRENDRA SINGH PARMAR,
ADVOCATE
MR SUSHEEL TOMAR, ADVOCATE**

FOR THE RESPONDENT: NEMO

IN THE MATTER OF:

**JAUHAR SMRITI SANSTHAN
SECTOR NO. 4, GANDHINAGAR,
JAUHAR BHAWAN ROAD,
CHITTORGARH (RAJASTHAN)**

.....

APPELLANT**VERSUS**

**CENTRAL BOARD OF FILM
CERTIFICATION(CBFC), MUMBAI**

.....

RESPONDENT

**APPEAL UNDER SECTION 5C OF THE CINEMATOGGRAPH ACT, 1952 (37 OF 1952)
AGAINST THE DECISION OF CENTRAL BOARD OF FILM CERTIFICATION (CBFC) IN
RESPECT OF HINDI FILM "PADMAVAT".**

ORDER

This is an appeal preferred by Jauhar Smriti Sansthan, claiming to be a registered society working towards preserving Indian culture, art and heritage of Rajput community. The Appellant is based in Chitorgarh. The patron of the organisation is Maharani Nirupma Kumari, who is said to be a descendent of Rani Padmini. The Appellant organisation is aggrieved by the

grant of 'UA' certification with parental caution to the film titled 'Padmavat'. It is claimed that the film twists historical facts and casts aspersions on the legacy of the Rajput community. The Appellant claims that grant of 'UA' certificate by the CBFC with the change in name from 'Padmavati' to 'Padmavat' and the addition of two disclaimers, cannot suffice for the historical distortions and twists and the aspersions which fall on the legacy and valour of the Rajput community.

2. Upon filing of the appeal, Appellant's Counsel was called upon to satisfy the Tribunal on the maintainability of the appeal under Section 5-C of the Cinematograph Act, 1952.

3. Ms. Aishwarya Bhati, 'Learned Counsel for the Appellant submitted that this was a fit case where the Appellant should be regarded as an "aggrieved person" within the meaning of the Cinematograph Act i.e. under Section 5-C. She submitted that the Appellant and Members of the organisation have a vital stake and interest in the subject matter of the film which affects the pride and honour of the Rajput community. It is submitted that the term "person aggrieved" should be given a liberal and wide interpretation, so as to include an organisation such as the Appellant for purposes of Section 5-C of the Cinematograph Act, 1952 herein after referred to as the Act. Reliance was placed on Para 46 of *Hindu Dharma Sakthi Vs. Govt. of India & Ors* 2012 SCC Online Mad 1560. In the cited case, the Court dismissed the Writ Petition setting out in detail the reasons on merit for the writ to fail. In Para 46, while holding that the case to be one, where Freedom of Expression could not be suppressed and support could not be drawn from *S. Rangarajan Vs. P. Jagjivan Ram* reported at (1989) 2 SCC 574. The court observed in Para 46 of the cited judgement that the question raised is to be decided on the facts of the particular case. In the cited case, admittedly the film had already been certified for universal

exhibition. It was observed that the petitioner, therefore, had the remedy of the appeal under the Act. The writ petition, therefore was not competent for want of alternate remedy, otherwise also for the reasons stated there was no merit in the writ. The observation in the above case of petitioner having remedy of appeal is in the nature of 'obiter'. The judgement does not reveal either the consideration or examination of provisions of the Cinematograph Act or any discussion on how the remedy of appeal was available.

4. Let us notice the relevant provision of the Act providing for certification and in case of rejection of the application for certification, the provision for remedy of appeal. Section 5A deals with the certification of films by CBFC after examination. The various categories of certification that can be issued are given. Section 5B provides for certificate not being issued in situations where the Competent Authority is of the opinion that the film or any part of it is against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involve in defamation or contempt of court or is likely to incite the commission of any offence. Sub section 2 provides for the Central Government to issue directions/guidelines.

4.1 Coming to Section 5C it runs as under:-

- (1) Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board -
- a) refusing to grant a certificate; or
 - b) granting only an 'A' certificate; or
 - c) granting only a 'S' certificate; or
 - d) granting only a 'UA' certificate; or

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e) directing the applicant to carry out any excisions or modifications, may, within thirty days from the date of such order, prefer an appeal to the Tribunal.

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, allow such appeal to be admitted within a further period of thirty days.

(2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against, where such statement has been furnished to the appellant and accompanied by such fees, not exceeding rupees one thousand, as may be prescribed.

5. From the foregoing provisions, it would be seen that under Section 5C appeal is to be filed by a person who is applicant for grant of certificate in respect of a film. The appeal is provided against refusal to grant a certificate or grant of certificate in category other than what was sought and/or a direction to the applicant to carry out various excisions or modifications.

5.1 The section provides for filing of an appeal only by a person who has applied for and is aggrieved by the refusal or the grant of a category of certificate other than what he had sought. Under Section 5D, the Tribunal has been constituted for the purpose of hearing appeals against an order of the CBFC under Section 5C of the Act.

6. It would be seen that this Tribunal is the creation of the statute. Its powers are circumscribed by the statute which empowers it to hear appeals against orders passed by the Board on applications of persons who are applicants for a certificate under Section 5C. Only the appeals of such persons against the orders passed under Section 5C can be heard by the

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Tribunal. The appeal, therefore, has to be by a person, who is an applicant for grant of certificate before the CBFC. The appellant in the present case is not the producer or the applicant for grant of certification of film. The appeal filed by the appellant who is neither the applicant for grant of certificate nor the producer of the film is, therefore, not maintainable before this Tribunal under the provisions of the Act.

7. Reliance was also placed by the Appellant on *Dharmaprachar Sabha & Anr. Vs. Union of India & Ors 2014 SCC Online Del 6559*, a decision of the division bench of the Delhi High Court. The petitioner in the cited case had filed a writ petition under Article 226 of the Constitution of India. It was not the case of appeal filed under the provisions of the Cinematograph Act. The petitioner in a writ petition sought the revocation of the certificate issued by the CBFC to the film 'Singham Returns' on the ground that it shows the religious and spiritual practices in a negative manner and derogatory light. The Petitioner therein was seeking *inter-alia* a CBI enquiry on the matter and the issuance of a general direction to the CBFC to refuse certification to films where religious and spiritual places were maligned or shown in negative light. Lastly, a direction to the Union of India for provision of a forum for redressal of public grievances regarding wrong certification of films.

7.1 It is while dealing with this last relief, the court observed that the said relief has been claimed in ignorance of the provisions of the Cinematograph Act. In the said context, the court observed - "though the language of Section 5C suggests that the appeal, thereunder can be preferred only by a person who has applied for a certificate in respect of a film, but the possibility of the same being interpreted so as to include others as well cannot be ruled out. However, we are not venturing into the said aspect suffice it to state that such a direction cannot be given". It would be seen that the court was dealing with directions sought in a writ petition under

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Article 226, where the jurisdiction is far wider, however, the court rejected the said prayer for grievance redressal forum holding prima facie that 5C suggests that appeal under 5C can be preferred only by a person who had applied for a certificate in respect of a film. In these circumstances, the said judgement cannot also advance the Appellant's case.

8. We are not persuaded that the concept of "person aggrieved" should be given wider interpretation to include organizations such as Appellant under the Act notwithstanding the provisions of the statute, circumscribing and limiting the appellate jurisdiction in terms of the statutory provision to person who had applied for certification of the film.

9. Moreover, in this case, the Appellant itself has placed on record the orders passed by the Hon'ble Supreme Court in writ petition no. 36 of 2018 by the producers of the film challenging the notification and orders passed by the States of Gujarat and Rajasthan, prohibiting and banning the exhibition of film 'Padmavat' under the Gujarat Cinemas (Regulation) Act 2014 under the Rajasthan Cinemas (Regulation) Act, 1952. The Supreme Court noticed that certificate was granted by the CBFC after critical examination of the film and directing certain excision as well as introduction of 2 disclaimers. The court after a detailed discussion and examining all facets, stayed the notifications banning the film and directed the State Authorities to maintain law and order situation for ensuring the exhibition of the film. The said orders are binding on all the courts and authorities under Article 141 of Constitution of India. Further, under Article 144 of Constitution of India, all the Civil and Judicial Authorities are bound by the said orders to act in aid of the court in their implementation. In these circumstances, there cannot be a question of there being any balance of convenience in favour of appellate for consideration of stay.

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10. In view of the foregoing discussion, we hold that the appeal preferred by Jauhar Smriti Sansthan is not maintainable under Section 5-C and 5-D of the Cinematograph Act. The same is accordingly dismissed as not maintainable. Copy of the order be furnished to the parties forthwith.

Shazia

(SHAZIA ILMI)
MEMBER, FCAT

Manmohan Sarin
(CHIEF JUSTICE (RETD.) MANMOHAN SARIN)
CHAIRPERSON, FCAT