

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 16th September, 2015

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W.P.(C) No.8883/2015

PREM MARDI

..... Petitioner

Through: Mr. Ashok Agrawal with Mr. Anuj Kapoor and Ms. Namita Wali, Advs. With petitioner in person

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Jasmeet Singh, CGSC, Ms. Astha Sharma, Ms. Shreya Sinha, Mr. Akash Nagar & Ms. Pallavi Shali, Advs. for UOI.
Ms. Jyoti Taneja, Adv. for GNCTD.
Mr. Pradeep Kumar Arya, Mr. Narinder Chaudhary, Mr. Bhaskar Bhardwaj, Mr. Pankaj Singh and Mr. Raj Karan Sharma, Advs. for R-5.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. In these days of challenge to the bans imposed by the Governmental and Municipal Agencies on various aspects of life being brought before the Courts by the Advocates community, the petitioner, belonging to the same community, has brought this writ petition under Article 226 of the Constitution of India seeking a ban on the screening of the film "MSG-2- The Messenger", by seeking the reliefs of (i) quashing of the Certificate issued by the respondent

no.3 Central Board of Film Certification (CBFC) to the said film; (ii) by seeking a direction to the respondent no.2 Ministry of Home Affairs, Government of India (GOI) to issue appropriate orders to 'YouTube' to take down the trailer of the said film from its website; (iii) by seeking a direction to the respondent no.1 Ministry of Information and Broadcasting, GOI to issue appropriate orders to cable and television networks proscribing them from broadcasting the said film or its trailer; and, (iv) by restraining the respondent no.5 Hakikat Entertainment Pvt. Ltd. stated to be the producer of the said film from circulating, distributing, exhibiting, sharing the said film or its trailer in any manner whatsoever.

2. On the plea of the petitioner that the said film is due for release for public viewing day after tomorrow i.e. 18th September, 2015 and that unless interim orders as sought of restraining the same are issued, the writ petition would become infructuous, the counsel for the petitioner and the learned Additional Solicitor General (ASG) appearing for the respondents no.1 to 3 and 6 i.e. Union of India and CBFC on advance notice have been heard at length.

3. It is the case in the petition:

- A. that the petitioner belongs to the Santhal Scheduled Tribe of Jharkhand;
- B. that the official trailer of the subject film 2.5 minutes long, uploaded on 27th August, 2015 on 'YouTube' discloses the protagonist of the said film to be "fighting against the wild & primitive lifestyle of tribals and succeeding in turning them into civilized human beings";
- C. that the official trailer begins by stating that the film is based on true events and refers to 'Adivasis' as having been declared terrorists by the Government and further states that *Adivasis* are neither humans nor animals but "*Shaitaans*" who have to be converted into "*Insaans*";
- D. in the trailer, the protagonist Saint Gurmeet Ram Rahim Singh Ji Insaan is shown as a *masiha* who has undertaken the task of civilizing the *Adivasis* by using violence against the *Adivasis*;
- E. that the trailer of the subject film is also being repeatedly shown on television on various channels as a promotion / advertisement;

F. that the subject film has been granted “U/A” certification by the respondent no.3 CBFC; and,

G. that the grant of certificate to the subject film is bad in law.

4. The counsel for the petitioner has drawn attention to the Guidelines for Certification of Films for Public Exhibition issued on 6th December, 1991 by the GOI in exercise of powers conferred by Section 5B(2) of the Cinematograph Act, 1952 *inter alia* requiring the respondent no.3 CBFC to ensure that:

- (a) pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of de-sensitising or de-humanising people are not shown;
- (b) human sensibilities are not offended by vulgarity, obscenity or depravity;
- (c) such dual meaning words as obviously cater to baser instincts are not allowed; and,
- (d) visuals or words contemptuous of racial, religious or other groups are not presented and visuals or words which promote communal,

obscurantist, anti-scientific and anti-national attitude are not presented.

Attention is next invited to Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 making, insulting or intimidating with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, an offence punishable with imprisonment for a term which shall not be less than six months. It is further argued that the insult and defamation of the Scheduled Tribes in the subject trailer is an offence under several provisions of the Indian Penal Code (IPC), 1860 as well. It is argued that the film, as appears from the trailer, incites the public at large to behave violently with the *Adivasis* who are described as *Shaitans*.

5. Having not had an occasion to see the trailer, though CD thereof is annexed to the petition, the same was seen on 'YouTube' on the Smart Phone of the counsel for the petitioner. The script of the said trailer, as filed by the petitioner with the petition itself, is as under:-

“Jo dusre ki jaan bachane ke liye apni jaan daav par lagata hai wo hai sant gurmeet ram rahim singh ji insaan.

Adfsads

*Yeh jo hamare saath lagte jungle mein aadivasi rehte hai,
un sabhi ko sarkar ne aatankvadi ghoshit kar diya (0:38
– 0:44)*

*Main wo aajar hun jo apne shikar ko apni phoomkar se
kheenkar bina chabaye nigal jaata hun*

*Arey oo dekhna kahin aam ke bhule ke mom no nikal jana
pata nahi chalega kitna phata hai aur kitna baaki reh
gaya*

*Aapne ek bahot badi galti kardi aadivasiyon ke ilake
mein aakar; na to yeh log inssan hai or na hi janwar; yeh
shaitaan hai shaitaan (01:07 – 01:17)*

*Arey yeh shaitaano ko insaan banana ke liye hi hum
aayein hai or isse ke liye hamari puri zindagi bhi hai
(01:18 – 01:26)*

*Msg the messenger * 2*

*country ke liye, society ke liye kardo change jo ho
teacher*

*Msg the messenger * 2*

*Haath agar aise rehta to gundo aur raakshako ko bhakt
bana deta hai, aur agar haath aise ho jaata hai to rakshak
bhi trahimaam trahimaam kar uthte hai*

*Naa hindu bura hai, na hi sikh isaai musalman bura hai,
burai pe utar aae wo insaan bura*

*Msg msg is back * 2*

*Pure samaj mein pata nahi kitne insaan rakshak banker
ghoom rahe hai; haemin jaana hoga, unhe banana
insaan (02:31 – 02:40)”*

6. The learned ASG appearing on advance notice has contended that:
- (i) that the trailer of the film was released on ‘YouTube’ on 17th August, 2015 and not on 27th August, 2015 and the petitioner has chosen to file this petition just a day before the slated release of the film and the petitioner is disentitled from any relief on this ground alone;
 - (ii) the learned ASG has drawn attention to Guideline 3 of the Guidelines aforesaid which requires the CBFC to ensure that the film is judged in its entirety from the point of view of its overall impact and is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to which the film relates and has contended that a reading of the entire script of the trailer does not make out a case of the certification of the film being in violation of the Guidelines highlighted by the counsel for the

petitioner or disclose an offence under the IPC or under the SC / ST Act supra;

- (iii) the learned ASG has also invited attention to para 26 of *S. Rangarajan Vs. P. Jagjivan Ram* (1989) 2 SCC 574, Para 25 of *Bobby Art International Vs Om Pal Singh Hoon* (1996) 4 SCC 1, paras 7 to 9 of *Ajay Gautam Vs. Union of India* 2015 (147) DRJ 514 (DB) to contend, a) that allegedly offending words / visuals are to be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating minds nor all those who scent danger in every hostile point of view; b) that the standards of censorship must make a sensitive allowance in favour of freedom, those living thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good; c) that a film that illustrates consequences of a social evil necessarily must show that social evil; d) that a film is to be judged in its entirety from the point of view of its overall impact; and, e) that the Constitution protects the right of the artists to portray social reality in all its forms and some of

that portrayal may take the form of questioning the values and most that are prevalent in the society;

(iv) that the film has been appropriately granted U/A certification.

7. The counsel for the petitioner in rejoinder has invited attention to para 10 of *S. Rangarajan* (supra) to contend that movies motivate thought and action and assure a high degree of attention and retention and has argued that the subject movie showing the 'adivasis' in bad light and further showing the protagonist of the film as taming the 'adivasis' has the tendency to incite the public at large to indulge in similar action. Attention is further invited to the judgment dated 19th November, 2014 of the Division Bench of this Court in W.P.(C) No.7969/2014 titled *Dharmaprachar Sabha Vs. Union of India* where the disclaimer generally found in most works of fiction, of none of the characters therein being based on any living or dead person and the resemblance if any being unintentional, was noticed and it is contended that on the contrary the subject film is described as based on true events. It is further contended that merely because CBFC is an expert broad based body does not mean that its certification is infallible. It is argued that this Court should grant an interim stay of the release of the film and decide the matter after directing a special screening of the film to be held. It is yet

further contended that the film is contemptuous of a distinct group i.e. the 'adivasis' and depicts them as anti-national and which cannot be permitted.

8. I have considered the rival contentions.

9. The entire case of the petitioner is premised on the use in the film of the word 'adivasi'. The petitioner assumes the adivasi to be meaning tribals or more particularly the scheduled tribals and thus finds the film de-sensitive of the tribals and more particularly scheduled tribals and promoting hatred against the tribals and scheduled tribals.

10. However that is not my understanding of the word adivasi. As per my understanding, 'adivasi' connotes aboriginal people and not people falling in the definition of scheduled castes and scheduled tribes in Articles 341 and 342 of the Constitution of India. However, to verify which of the aforesaid understandings is correct, I have checked the meaning of 'adivasi' and find the same described as 'people living in India before the arrival of the Aryans in the second millennium BC and descendents thereof'. Adivasi, translated in English means the earliest inhabitants of the earth. Per contra, Tribes is understood as a social division in a traditional society consisting of families or communities linked by social, economic, religious, or blood ties, with a

common culture and dialect, typically having a recognized leader. Just like Article 341 of the Constitution of India defines scheduled castes as the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be scheduled castes in relation to that State or Union, Article 342 defines Scheduled Tribes as tribe or tribal community or part of or groups within tribe or tribal communities which shall for the purposes of the Constitution be deemed to be scheduled tribes in relation to that State or Union Territory.

11. To be sure, I have also seen the Constitution of India in Hindi and do not find the word 'adivasi' being used in Articles 341, 342 and 366 in place of the word 'tribe'. The word used for the word tribe therein is 'janjati'. It, even otherwise, as per the dictionary is the Hindi equivalent of tribe.

12. I may thus reinforce that the term 'adivasi' is not indicative of tribes or scheduled tribes but is indicative of the earliest inhabitants of any land whether it be in India or anywhere else in the world. I find the term adivasi being used for the earliest settlers of the land that is now known as Bangladesh, Nepal, Srilanka as well. On the same parity of reasoning, the aborigines of America would also qualify as adivasis.

13. However I have examined the matter also from the point of view of anyone who may understand the word adviasi as connoting the tribal or the scheduled tribal population of India.

14. I am unable to find anything in the trailer of the film which in the opinion of a reasonable person can be said to be inciting the people to indulge in violence against the tribal people in India. The portrayal of the people whom the protagonist of the film is shown to be fighting or taming, are described in the trailer as an evolutionary stage leading to human beings. The film describes the 'adivasis' as, neither animals nor humans. Moreover, the film shows its protagonist as possessing super natural powers who is able to single-handedly and without any weapon fight a large number of adversaries and who is not only able to stop large stone boulders thrown at him but also crush them into small pieces. He is also shown as taking flights in the air, across a fleet of at least a dozen cars and throwing full grown elephants in the air and stopping ferocious charging bulls with his hand. The dialogues in the trailer of the film are sprinkled with reference to human beings of all religions capable of acting as devils. No person in his right senses can, on watching of the said trailer of the film, believe as to what is depicted therein to be a reality or possible in real life. The film is a work of

fiction intended to show its protagonist who in his real life form also proclaims to be a spiritual leader, in a superhuman form. In fact the counsel for the petitioner himself admitted that nobody knows how the actual adivasis live and what are shown in the film as adviasi practices are but a work of imagination.

15. In my opinion, only such films can be said to be having propensity of inculcating hatred, ill-will and violence towards a person or group of persons which show life as is ordinarily understood by the viewers and not a film which, to the average viewers understanding, is not depicting life but a fantasy or what is surreal. When the film traverses from the domain of real to surreal and depicts what none in his / her senses can believe to be possible and is in the realm of showing the impossible and fantastic, in my view it cannot be said to be capable of influencing any reasonable mind. The purport of such film is only to transform the viewer to a dream / fantasy land, with no illusions whatsoever of the same mixing with reality.

16. As far as the averment of the film showing the protagonist thereof fighting the life style of the tribals, at least on watching the trailer thereof, it is not so evident.

17. There is another aspect of the matter. With the vast reach of the electronic and print media and communication networks in each and every nook and corner of the country, inhabitants of no part of the country, howsoever far removed from the cities, can be said to be so naïve as to be not able to distinguish between real and fantasy. The petition undermines the average intelligence of Indian citizen and proceeds on the premise of Indian viewers of film to be of such an intellect and understanding so as to immediately after watching the film, start imitating the fantasy (and which they are certainly incapable of) shown in the movie.

18. The subject film from the trailer is found to be depicting a fantasy to the viewers and has to be understood in the said light only. In fact, in some scenes in the trailer, the adivasis are shown with two horns and having the lower body as of an animal and the upper torso of a human being. The reference in the film to adivasis is not found to be relatable in any manner to scheduled tribes.

19. There is thus no merit in the petition.

20. Dismissed.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 16, 2015

‘pp/gsr’