

# LEGALFOXES LAW TIMES

## CASE COMMENT

By Rithvika D. S.

**Indibility Creative Pvt. Ltd. and Others**

v.

**Govt. of West Bengal and Others**

(Writ Petition No 306 of 2019)

(Decided by JJ. D Y Chandrachud and Hemant Gupta)

### **Facts:**

The petitioners in the present case are Producer(petitioner 1) and Directors(petitioner 2&3) of the Bengali movie, Bhobishyoter Bhoot (the Future Ghosts). This film is a political satire about ghosts who try to find meaning by rescuing the marginalized and the obsolete of the society. Anik Datta is known for protagonist films with punch humour and thoughts to reflect upon, this is one of such movies. The film was scheduled to release in Kolkata and few districts of West Bengal on 15th February and had received its certificate for public exhibition by CBFC(Central Board of Film Certification) on 19 November 2018. And later the film was promoted in print and electronic form.

However, On 11 February 2019 the Petitioner No. 2 received a phone call from the Kolkata police which followed by a letter, asking for an advance screening of the film in front of senior officials. The police stated that they had received intelligence reports that the film could cause “political law and order issues”. The Petitioner No. 2 responded by letter on 12 February 2019 that “the film was already certified and it was settled law that after the approval of the CBFC, it wasn’t open for any other authority to obstruct the screening of the film.”

The film was released on 15 February 2019. But, On 16 February 2019, the film was simultaneously removed from theatres by an overwhelming number of exhibitors and tickets were refunded without giving any reason. Allegedly, this was due to instructions by “higher authorities.” This act led to press coverages and was highly contended by several eminent personalities. The Petitioners therefore filed a writ petition before the Supreme Court alleging violation of their rights.

By the time the writ was filed, the movie was already pulled down from a majority of the theatres and out of forty eight exhibitors, only two continued to play the film, INOX Leisure Ltd communicated on 4 March 2019 to the producer that they were “directed by the authorities to discontinue screening” of the film “keeping in mind the interest of the guests”. The Petitioners therefore, stated that the State had sought to ban the film through indirect means and without the authority of law. The Court therefore considered the irreparable loss caused due to interference with the screening of the film as well as the State’s positive obligation to protect freedom of speech and passed significant interim orders. By order dated 15 March 2019, the Court directed the Chief Secretary and Principal Secretary, Department of Home of the State of West Bengal to ensure that there is no obstruction to the screening of the film. They were also instructed, along with the Director General of Police, State of West Bengal to ensure that required security arrangements are made to protect the viewers of the film and the property of the exhibitors. By order dated 25 March 2019, the Court noted the statement of the counsel for the State of West Bengal that there was no formal ban on the film. However, considering the communication dated 11 February 2019 as an extra-constitutional exercise of power, the Court then directed the Joint Commissioner of Police to withdraw the said letter. The police and State authorities were directed to send communications to each of the exhibitors stating that there was no ban on the film and that the State will provide adequate security to all exhibitors who resume the screening of the film. An affidavit of compliance dated 27 March 2019 was duly filed by the relevant authorities.

### **ISSUES**

1. Whether the obstruction caused by the state of West Bengal through its Home Department and the Kolkata police amounts to a subversion of the rule of law?
2. Whether the attempt of the state to interfere with the exhibition of the film is destructive of the freedom of speech and expression?
3. Whether a film certified by CBFC is subject to censorship by the state?

## LAWS

Article 19 of the Constitution of India -“Protection of certain rights regarding freedom of speech, etc.—

(1) All citizens shall have the right

(a) To freedom of speech and expression;

(b) To assemble peaceably and without arms;

(c) To form associations or unions [or co-operative societies];

(d) To move freely throughout the territory of India;

(e) To reside and settle in any part of the territory of India;

(g) To practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.] ”

The State Act (Section 6 of the West Bengal Cinemas (Regulation) Act 1954) and the Central Act (Section 13 of the Cinematograph Act 1952)

Article 14 of the Constitution of India: Equality before law—“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 21 of the Constitution of India: Protection of life and personal liberty—“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 32 of the Constitution of India: Remedies for enforcement of rights conferred by this Part—

(1) “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) “The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

### Analysis

“Speech is worth defending even when certain individuals may not agree with or even despise what is being spoken. This principle is at the heart of democracy, a basic human right, and its protection is a mark of a civilized and tolerant society. To defend free speech are both instrumental and moral.” (add footnote) “Extensive freedom of speech is a precondition not just for individual happiness, but for a flourishing society. Without free expression, humankind may be robbed of ideas that would otherwise have contributed to its development. Preserving freedom of speech maximizes the chance of truth emerging from its collision with error and half-truth. It also reinvigorates the beliefs of those who would otherwise be at risk of holding views as dead dogma”.<sup>1</sup>

This freedom is however with restriction governed by the ‘harm Principle’, which proposes that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (expand the principle and its applicability in India i.e., specify the application in the below mentioned cases and how it has worked out in the case in hand)

In the case of *RomeshThapar v. State of Madras*, it was held by the Hon’ble Supreme Court that,

“very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organizations, for, without free political discussion, no public education, so essential for the proper functioning of the processes of popular Government, is possible.”

The Supreme Court specifically dealt with the right of express via electronic means and the permissible restriction in *LIC v. Manubhai Shah* and observed,

“Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny

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<sup>1</sup>John Stuart Mill ‘On liberty’ (1859).

screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution”

Further in case of *S. Rangarajan v. P. Jagjivan Ram* ([add footnote](#)), a Division Bench of the Madras High Court revoked the U-Certificate granted to a Tamil film “*Ore Oru Gramathile*” which was regarding the issue of reservation. Justice Jagannatha Shetty, emphasised upon the positive duty of the state in the protection of freedom of speech and expression. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem.

In *KM Shankarappa v. Union of India*, ([add footnote](#)) the validity of Section 6(1) of the Cinematograph Act, 1952 was challenged wherein the Division Bench held that,

“Once an expert body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation.”

In *Anand Chintamani Dighe v. State of Maharashtra*, ([add footnote](#)) the Government of Maharashtra had issued a notification declaring every copy of the play titled “*Mee Nathuram Godse Boltoy*” and its translations in Gujarati or any other language would stand forfeited to the Government. In an order of the Bombay High Court granting a stay on the notification, court upheld the importance of diverse viewpoints and the requirement for the expression of the same by stating

“the strength of our society and the stability of the constitutional structure lies in its ability to accommodate a diversity of viewpoints and cultures. The maturity of a society committed to a democratic way of life lies as much as in its respect for those who conform as in its deference for those who do not”

In case of *Viacom 18 Media Pvt. Ltd. v. Union of India*, a full Bench of the Supreme Court granted a stay on notifications and orders issued by some states banning the exhibition of the film ‘*Padmavat*’ and

restrained other States from issuing similar orders and notifications, after the Central Board of Film Certification had granted certification. Justice Dipak Mishra held that

“Once the parliamentary legislation confers the responsibility and the power on a statutory Board and the Board grants certification, non-exhibition of the film by the States would be contrary to the statutory provisions and infringe the fundamental right of the petitioners.”

When in *Prakash Jha Productions v. Union of India*, the UP Government sought to ban the screening of the film ‘Aarakshan’ dealing with the issue of reservation, after it had been certified U/A by the Censor Board under Section 6(1) of the Uttar Pradesh Cinemas (Regulation) Act, 1955 to suspend exhibition of the film on the ground that it was likely to cause a breach of peace, the court upheld the ruling in *K.M. Shankarappa v. Union of India* on the limits of the state control in following words:

It is the duty of State to maintain law and order situation in the Society and, therefore, the State should maintain it effectively and potentially. Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State.

### **Conclusion**

This Judgement started with an analysis of philosophical and literary writings, citing Voltaire, Camus, and Simone de Beauvoir among many others, to establish the value of freedom of speech and expression in a democratic country like India. In particular it was stated that the right to freedom of expression requires protections to speech, as this principle is at the most essential of democracy, a basic human right, and its protection is a mark of a civilized and tolerant society. It further explained that there are many moral arguments to defend free speech based on its intrinsic value as well as instrumental arguments based on its benefits for individual, social and economic development, the bench further considered that restrictions to freedom of expression can only be justified if they are to prevent harm to others. It was based on Dworkin’s concept of democracy to establish that the participation of minorities and the presentation of unconventional views are necessary for public debate.

Next the Court extensively reviewed and relied on established case laws (*RomeshThapar v. State of Madras*), especially “concerning censorship of content by state-controlled entities” (*LIC v. Manubhai Shah*).

The Court took into consideration the circumstances surrounding the release and subsequent withdrawal of the film from all exhibitors, including the communication by police officials to the movie producers. It stated that

“The police are not in a free society the self-appointed guardians of public morality. The uniformed authority of their force is subject to the rule of law. They cannot arrogate to themselves the authority to be willing allies in the suppression of dissent and obstruction of speech and expression.”

It concluded that the State had went to indirectly interfere with the screening of the film, outside the scope and the Court also recognized the harm of such indirect interference, known as ‘shadow banning’ whereas in the present case , there was no formal ban or reasons provided by the State, rendering this right illusory.

The Court also considered the failure of the State to provide adequate protection to the release of the film. It was considered necessary to read ‘positive obligations’ into the right to freedom of speech and expression in order to ensure the meaningful exercise of this right. The Court cited *S. Rangarajan v. P. Jagjivan Ram* to establish that “the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence.” It mainly elaborated that once a film had been cleared by the film board, the Central Government or state government did not have the power to “review or revise” those decisions based on concerns about public violence towards the film and that it was the Government’s responsibility to ensure maintenance of law and order. After visiting *K.M. Shankarappa v. Union of India*, *Maqbool Fida Hussain v. Rajkumar Pandey* and *Viacom 18 Media Pvt Ltd. Versus Union of India* and considering the social context, the judges expressed a concern that “contemporary events reveal that there is a growing intolerance: intolerance which is unaccepting of the rights of others in society to freely espouse their views and to portray them in print, in the theatre or in the celluloid media.” In the present case, it was held that there had been “an unconstitutional attempt to invade the fundamental rights of the producers, the actors and the audience. Worse still, by making an example out of them, there has been an attempt to silence criticism and critique.”

Therefore, considering the State’s (police) interference with the freedom of speech and expression, the Court held that there was a violation of the rights of the Petitioners under Article 19(1)(a) of the Constitution. The Court also recognized the importance of remedy under public law to ensure adequate compensation for this violation of Fundamental Rights. The Respondents were directed to pay compensation quantified at Rs.20 lakhs by the Court, in addition to Rs.1 lakh as legal costs.

**REFERENCES**

Supreme Court cases (SCC)

Manupatra

The Constitution of India

Global freedom of expression Columbia University.