

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

MONDAY, THE 19TH DAY OF DECEMBER 2022 / 28TH AGRAHAYANA, 1944

WP(C) NO. 35667 OF 2022

PETITIONERS:

ALI AKBAR @ RAMASIMHAN
AGED 59 YEARS
S/O/ ABOOBAKKER,
KRISHNA KRIPA,
MUKKAM KADAVU ROAD,
THALAKKULATHUR P.O.,
KOZHIKODE, KERALA,
PIN- 673317.

BY ADVS.
P. RAVINDRAN (SR.)
REJI GEORGE
BINOY DAVIS
VARNA MANOJ
SREEDHAR RAVINDRAN

RESPONDENTS:

- 1 UNION OF INDIA REPRESENTED BY THE SECRETARY,
MINISTRY OF INFORMATION & BROADCASTING,
SHASTRI BHAWAN,
NEW DELHI - 110001.
- 2 THE CENTRAL BOARD OF FILM CERTIFICATION,
REPRESENTED BY ITS CHAIRMAN,
FILMS DIVISION COMPLEX,
PHASE- I BUILDING,
9TH FLOOR, DR. G. DESHMUKH MARG,
MUMBAI - 400026.
- 3 THE CHAIRMAN,
THE CENTRAL BOARD OF FILM CERTIFICATION,
FILMS DIVISION COMPLEX,
PHASE- I BUILDING,
9TH FLOOR, DR. G. DESHMUKH MARG,
MUMBAI - 400026.

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4 THE REGIONAL OFFICER,
REGIONAL OFFICE,
THE CENTRAL BOARD OF FILM CERTIFICATION,
THIRUVANANTHAPURAM,
1ST FLOOR,
CHITRANJALI STUDIO COMPLEX,
THIRUVALLAM,
THIRUVANANTHAPURAM - 695 027.

BY ADV MANU S., DSGI OF INDIA FOR R1 TO R4.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 19.12.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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CR

N. NAGARESH, J.

.....
W.P.(C) No.35667 of 2022
.....

Dated this the 19th day of December, 2022

J U D G M E N T

~ ~ ~ ~ ~ ~ ~ ~ ~

An eminent Malayalam Film Director is forced to approach this Court as his fundamental right to freedom of speech and expression has been drastically curtailed by the 3rd respondent, otherwise than in accordance with the procedure established by law.

2. The petitioner is a Malayalam Film Director, Screen Writer and Lyricist, who has directed more than 20 Malayalam Films. He is recipient of the Kerala State Film Award for Best Debut Director for his movie titled

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“Mamalakalkkappurath”. The petitioner produced and directed a Malayalam movie “Puzha Muthal Puzha Vare” based on the Malabar Rebellion of 1921.

3. The petitioner submitted an application on 17.05.2022 to the 2nd respondent-Central Board of Film Certification seeking certification of the Film “Puzha Muthal Puzha Vare”. The 4th respondent constituted an Examination Committee for the Film. The Committee, after examining the movie, submitted its recommendations on 25.06.2022. The 3rd respondent-Chairman of CBFC referred the movie to a Revising Committee.

4. The Revising Committee examined the movie on 05.08.2022. The petitioner was summoned by the Revising Committee and various aspects of the Film were discussed. The 10-Member Revising Committee, by a majority decision (7/10), decided to issue 'A' certification to the movie with a few cuts. The petitioner would submit that the said Revising Committee had a distinguished historian from the Indian Council of Historical Research (ICHR), as one of its

Members.

5. To the surprise and predicament of the petitioner, the 3rd respondent, instead of placing the recommendation of the Revising Committee before the CBFC, again referred the Film to a second Revising Committee. The petitioner states that the decision of the 3rd respondent communicated through Ext.P3 letter referring the movie to a second Revising Committee purportedly under Rule 24(2) of the Cinematograph (Certification) Rules, 1983 is highly illegal and arbitrary.

6. The Second Revising Committee examined the petitioner's movie on 18.08.2022. There were no Members proficient in History or knowledgeable in Malayalam language, in the second Revising Committee. By Ext.P4 communication dated 24.08.2022, the petitioner has been informed that the Board has decided to certify the petitioner's Film for public exhibition restricted to adults provided the petitioner carry out excisions/modifications as suggested.

7. The petitioner states that though the modifications suggested is 12 in number, in effect, total number of excisions will be much more than 12 and it will undermine the very soul of the movie. The action of the respondents infringes the fundamental right guaranteed to the petitioner under Articles 14 and 19 of the Constitution of India, contends the petitioner.

8. Respondents 1 to 4 filed a counter affidavit and resisted the writ petition. The respondents submitted that an application for certification of the feature film titled 'Puzha Muthal Puzha Vare' was received on 17.05.2022. Requisite supporting documents were not uploaded by the petitioner along with the application. Hence, the application was returned on 26.05.2022. The petitioner resubmitted the application. The film was screened by the Examining Committee on 26.04.2022. The Examining Committee consisted of the Regional Officer, CBFC, Thiruvananthapuram as Examining Officer and four Advisory Panel Members.

9. On examining the film, three members of the Examining Committee recommended denial of certification to the film as those members found that the film contained visuals as well as dialogues which are likely to endanger public order. The remaining two members of the Examining Committee recommended UA Certification (Unrestricted Public Exhibition with Parental Guidance for children below the age of 12 years).

10. The Regional Officer sent the recommendations of the Committee members to the Chairman of the Board. The Chairman referred the film to a revising committee on 27.06.2022. The Revising Committee examined the film on 05.08.2022 at Mumbai. The Revising Committee consisted of a Presiding Officer and seven members. Five of the members of the eight member Revising Committee were of the opinion that the film can be certified with an adult rating with seven modifications. The remaining three members felt that the minority community was shown in a very poor light. There was a subject expert, a member from ICHR, who was

also present during the screening.

11. On receipt of the report of the Revising Committee, the Chairman of the Board deemed it necessary to refer the film to a second Revising Committee. The second Revising Committee unanimously agreed that the film can be given adult certification subject to moderation of scenes of excessive and repeated atrocities shown. A report was accordingly sent to the Chair Person on 23.08.2022. The Chair Person approved the report. The Regional Officer thereupon sent Ext.P4 communication to the petitioner.

12. The learned Deputy Solicitor General of India pointed out that ample opportunity was given to the petitioner while taking the decision. The petitioner participated in the screening of the film by the Committees. The Revising Committee has suggested 12 insertions / excisions / modifications. The petitioner has not advanced any valid reason against such insertions / excisions / modifications.

13. On behalf of the respondents, it was further argued that the decision to send the film to a second

Revision Committee has been taken by the Chairman after consultation with the Board. The Chairman has only exercised his statutory powers. The petitioner has miserably failed to establish any illegality or arbitrariness in the decision of the Board. The writ petition is therefore liable to be dismissed, urged the Deputy Solicitor General.

14. I have heard the learned counsel for the petitioner and the learned Deputy Solicitor General of India representing the respondents.

15. The petitioner is aggrieved by the suggested incisions and modifications imposed on the film by the second Revising Committee. Such incisions and modifications are imposed for the reason that the Committee felt that the minority community was shown in a very poor line.

16. It is to be noted that the movie 'Puzha Muthal Puzha Vare' produced by the petitioner is based on the Malabar Rebellion of 1921. The script of the movie is based on incidents that occurred in Malabar during the Rebellion of

1921. While dealing with the issue of censoring films, it is relevant to note a decision of a Constitution Bench of the Hon'ble Apex Court in ***K.A. Abbas v. Union of India*** [(1970) 2 SCC 780]. While considering a documentary film entitled 'A Tale of Four Cities", Lordship Hidayatullah, CJ observed as follows:

We may now illustrate our meaning how even the items mentioned in the directions may figure in films subject either to their artistic merit or their social value over-weighing their offending character. The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read.

The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good, We must not look upon such human relationships as banned in toto and for ever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If

the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth.

17. The learned Senior Counsel assisted by the counsel for the petitioner would urge that after the report and recommendations of the first Revising Committee, if the Chairman disagrees with the report / recommendations, the matter ought to have been referred to the Central Board of Film Certification (CBFC). The Chairman of the Board has no power to refer the film to a second Revising Committee. Only the Board has such power.

18. The Senior Counsel further pointed out that the first Revising Committee which screened the movie included experts in History, as the movie related to a historic event. The second Revising Committee did not have the assistance of any expert/historian. The proviso to Rule 24(12) of the Cinematograph (Certification) Rules, 1983 would make it abundantly clear that if the Chairman of the Board disagrees

with the recommendations of a Revising Committee, he can only forward the matter to the Board for a decision. The Board may take its own decision and may even opt to send the movie to a second Revising Committee. The power of reference of the Chairman under Rule 24(1) can be exercised by him only once. Therefore, the decision of the Chairman to refer the film to a second Revising Committee is highly arbitrary and grossly illegal. Such reference affects the fundamental right guaranteed to the petitioner under Article 19(1)(a) of the Constitution of India. Exts.P3 and P4 orders are therefore liable to be set aside, urged the Senior Counsel.

19. Section 4 of the Cinematograph Act, 1952 provides that any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a Certificate in respect thereof. The Board may, after examining or having the film examined in the prescribed manner, sanction the film for unrestricted public exhibition or sanction the film for public exhibition restricted to adults or

sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film or direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition or refuse to sanction the film for public exhibition.

20. In exercise of the powers conferred by Section 8 of the Cinematograph Act, 1952, the Central Government has made the Cinematograph (Certification) Rules, 1983. Rule 22 of the Rules, 1983 provides that on receipt of an application for certification, the Regional Officer shall appoint an Examining Committee to examine the film. The Examining Committee shall examine the film having regard to the principles for guidance in certifying films specified in Section 5B(1) and the guidelines issued by the Government under Section 5B(2). The Examining Officer shall within three working days send the recommendations of all the members of the Examining Committee to the Chairman.

21. On receipt of the record, the Chairman shall direct the Regional Officer concerned to take further action on behalf of the Board in conformity with the recommendation of the Examining Committee either unanimously or by majority.

22. Rule 24 which provides for Revising Committee reads as follows:-

24. Revising Committee -

(1) On receipt of the record referred to in rule 22, the Chairman may, of his own motion or on the request of the applicant, refer it to a Revising Committee constituted for the purpose.

(2) The Revising Committee shall, subject to sub-rule (5), consist of a Chairman and not more than nine members, being members of the Board or members of any of the advisory panels, to be specified by the Chairman:

Provided that subject to the provisions of sub-rule (11), the Chairman shall give due representation to women in the Committee by nominating such number of women members as he thinks fit.

(3) The Chairman or in his absence a member of the Board nominated by the Chairman shall preside at every meeting of the revising committee.

(4) The Regional Officer of the centre where the application was received under rule 21, may be invited to attend any meeting of a Revising Committee and participate in proceedings thereof but he shall have no right to vote thereat.

(5) No member of the advisory panel who has been a member of the Examining Committee for any film shall be a member of the revising committee in respect of the same film.

(6) The provisions of sub-rules (4) to (8) of rule 22 shall apply mutatis mutandis to the examination of films by the Revising Committee or the Board.

(7) The Revising Committee shall examine the film at the applicant's expense, on such date, at such place and at such time, as the Chairman may determine.

(8) For the purpose of examination by a Revising Committee,-

(a) the applicant shall present the same clear unaltered print of the film which was shown to the Examining Committee and he shall make no change whatsoever in it and he shall furnish the necessary declaration in writing in that behalf;

(b) the applicant shall be required to furnish fifteen typed or printed copies of the complete synopsis of the film together with the full credit titles and of the full text of songs, if any, with reel number, and where he has made a representation under sub-section (2) of section 4, fifteen copies thereof shall also be furnished:

Provided that where the film is in a language, other than English or any Indian language, the applicant shall furnish fifteen typed or printed copies of the translation in English or in Hindi of the synopsis together with full credit titles and of the full text of the songs, if any:

Provided further that in the case of a film referred to in the preceding proviso, the Chairman may direct the applicant to furnish also fifteen typed or printed copies of the translation in English or Hindi of the full text of the dialogue, speeches or commentary:

Provided also that where the Chairman is satisfied that the applicant is not able to furnish the documents specified in this sub-rule for reasons beyond his control the Chairman may direct that the submission of such documents be dispensed with.

(9) Immediately after examination of the film, each member of the Revising Committee shall before leaving the preview theatre record his recommendations in writing in form VIII set out in

Schedule II spelling out in clear terms the reasons therefore and stating whether he or she considers-

(a) that the film is suitable for unrestricted public exhibition, i.e., fit for 'U' certificate; or

(b) that the film is suitable for unrestricted public exhibition but with an endorsement of caution that the question as to whether any child below the age of twelve years may be allowed to see the film should be considered by the parents or guardian of such child, i.e., fit for 'UA' certificate; or

(c) that the film is suitable for public exhibition restricted to adults, i.e., fit for 'A' certificate; or

(d) that the film is suitable for public exhibition restricted to members of any profession or any class of persons having regard to the nature, content and theme of the film, i.e., fit for 'S' certificate; or

(e) that the film is suitable for grant of 'U 'or' UA' or 'A' or' S' certificate, as the case may be, if a specified portion or portions be excised or modified there from; or

(f) that the film is not suitable for unrestricted or restricted public exhibition, i.e., that the film be refused a certificate, and if the Chairman is away from the regional centre where the film is examined the form aforesaid shall be prepared in duplicate.

(10) The presiding officer of the Revising Committee shall, within three days, send the recommendations of all the members of the Revising Committee to the Chairman and where the Chairman is away from the centre where the film is examined, by registered post.

(11) The quorum of the Revising Committee shall be five members of whom at least two persons shall be women:

Provided that the number of women members shall not be less than one-half of the total members of a Committee constituted under sub-rule (2).

(12) The decision of a Revising Committee shall be that of the majority of the members attending the examination of the film and, in the event of an equality

of votes, the presiding officer shall have a second or casting vote:

Provided that where the Chairman disagrees with the decision of the majority of the committee, the Board shall itself examine the film or cause the film to be examined again by another Revising Committee and that the decision of the Board or the second revising committee, as the case may be, shall be final.

23. It is clear from Rule 24 that the Chairman can refer a film to a Revising Committee constituted for the purpose, only on receipt of the record sent by the Examining Officer under Rule 22(12). As per Rule 24(12), the decision of a Revising Committee shall be that of a majority of the members. The proviso to Rule 24(12) specifically mandates that where the Chairman disagrees with the decision of the majority of the Committee, the Board shall itself examine the film or cause the film to be examined again by another Revising Committee and that the decision of the Board or the second Revising Committee, as the case may be, shall be final.

24. In the present case, the Examining Committee screened the film on 24.06.2022. The majority of members

of the Examining Committee recommended not to give certification to the film. It is evident that the Chairman of the Board was not satisfied with the recommendation of the majority and hence decided to refer the matter to a Revising Committee in exercise of his powers under Rule 24(1). The matter was accordingly referred to the first Revising Committee on 27.06.2022. The first Revising Committee consisted of eight members. Five members of the first Revising Committee approved the film subject to seven modifications.

25. A reading of Rule 24(12) would show that decision of the Revising Committee should be by majority. Therefore, when five out of eight members of the Revising Committee approved the film with seven modifications, the Chairman had option either to accept the recommendation of the Revising Committee or if the Chairman disagrees with the decision of the majority of the Committee, refer the matter to the Board for examination of the film. The proviso to Rule 24(12) is clear that where the Chairman disagrees with the

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decision of the majority of the Revising Committee, then it is only the Board which can either itself examine the film or cause the film to be examined again by another Revising Committee.

26. In this case, the Chairman himself has referred the film to a second Revising Committee on 18.06.2022. The said action of the Chairman is illegal and is in violation of the Cinematograph Act, 1952 and the Cinematograph (Certification) Rules, 1983. Exts.P3 and P4 orders are therefore set aside.

Writ petition is allowed as above.

Sd/-
N. NAGARESH, JUDGE

aks/24.12.2022

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APPENDIX OF WP(C) 35667/2022

PETITIONER' EXHIBITS

- EXHIBIT P1 A TRUE COPY OF LETTER NO.CA091750520200010
DATED 28.06.2022 ISSUED BY THE 4TH
RESPONDENT TO THE PETITIONER.
- EXHIBIT P2 A TRUE COPY OF EMAIL DATED 11.07.2022 SENT
BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF LETTER NO.CA091705202200010
DATED 16.08.2022 ISSUED BY THE 4TH
RESPONDENT TO THE PETITIONER.
- EXHIBIT P4 A TRUE COPY OF COMMUNICATION BEARING
NO.CA091705202200010 DATED 24.08.2022
ALONG WITH ITS ANNEXURE ISSUED BY THE 4TH
RESPONDENT INTIMATING THE DECISION OF THE
2ND RESPONDENT BOARD.