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

Date of Decision: 16th January, 2023

+ **W.P.(C) 445/2023 & CM APPLs.1752-53/2023**

AKSHAT BALDWA & ORS.

..... Petitioners

Through: Mr. Rahul Bajaj, Petitioner No.2 in person (Mob. 9890281068)

versus

YASH RAJ FILMS & ORS.

..... Respondents

Through: Mr. Abhishek Malhotra, and Ms. Shrishti Gupta, Advocates for R-1.
Mr. Chetan Sharma, ASG with Mr. Ravi Prakash, CGSC, Mr. Farman Ali & Ms. Usha Jamal, Advocates for R-2, 2A and 3 (M-8744956276)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 1753/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 445/2023 & CM APPL. 1752/2023

3. The present petition has been filed by four Petitioners who are citizens, out of whom, Petitioner Nos.1, 2 and 4 are visually impaired and Petitioner No.3 is hearing impaired. Petitioner No.1 is a law student at National Law School of India University, Bengaluru, Petitioner Nos.2 and 4 are qualified lawyers. Petitioner No.3 is the Joint Secretary & Executive Director of the National Association for the Deaf.

4. The petition has been filed seeking directions against Respondent No.1 - Yash Raj Films, which is the producer of the film 'Pathaan', the two

Ministries i.e., Respondent No.2 - Ministry of Information and Broadcasting and Respondent No.3 - Department of Empowerment of Persons with Disabilities, as also, the Respondent No.4 - Amazon Seller Services Private Limited, which operates an Over-The-Top (hereinafter, “OTT”) platform namely, Amazon Prime Video, on which the said film is stated to be scheduled for release on 28th April, 2023.

5. The Petitioners seek enforcement of various rights and accessibility requirements, as prescribed under the provisions of the Rights of Persons with Disabilities Act, 2016 (hereinafter, “RPWD Act”). The prayers sought in the present petition are extracted below:

“The Petitioners, therefore, pray that in the facts and circumstances of the present case this Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ or direction to:

A. Directing Respondent No. 1 to provide AD and subtitling/captioning for the movie Pathaan, in theatres, Over-the-Top streaming platforms (through Respondent No. 4) and any other media in which the movie is made available;

B. A direction to Respondent No. 2 and 3 to take appropriate steps in effecting the provision for audio description and subtitling/captioning for the movie Pathaan;

C. A Direction to Respondent No. 2 and 3 to promptly notify standards of accessibility for captioning/subtitling and audio description; and

Pass such other and further orders / directions / writs as this Hon'ble Court may deem fit and proper in the facts and circumstance of the case.”

6. The case of the Petitioners is that, though various rights have been recognized for 'persons with disabilities' under the RPWD Act, most films which are released in India are not catering to disabled persons despite the statute having been enacted more than 5-6 years ago.

7. Mr. Rahul Bajaj, Petitioner No.2 appearing in person, makes the following submissions:

- i. There are various tools that help make films disabled - friendly, but none of them have been implemented in the film 'Pathaan'.
- ii. The film 'Pathaan' is slated for release in theatres on 25th January, 2023. However, apart from the subtitles having been approved by the Central Board of Film Certification (hereinafter, "CBFC"), the said film does not make available audio description and closed captions. Even the approved subtitles are in the English language, instead of being in the language of the film, i.e., Hindi, and this makes it almost impossible for hearing and visually impaired persons to enjoy the said film.
- iii. The producers of the film 'Pathaan' ought to be directed to add the audio description, subtitles, and closed captions, before the release of the said film.
- iv. The two Ministries, i.e., Respondent Nos.2 and 3, be directed to notify the required standards for accessibility to persons who are hearing and visually impaired. On this aspect, he submits that even though certain guidelines have been issued in the past, the same have not been implemented by the Ministries, and there are no sanctions for non-compliance of the same. Thus, a

large number of films do not take the necessary steps to provide these tools which make the films disabled-friendly.

- v. Reliance is placed upon the judgment of the Supreme Court in *Rajive Raturi v. Union of India*, [(2018) 2 SCC 413].
- vi. Further reliance is placed upon the judgment of the Supreme Court in *Vikash Kumar v. UPSC and Ors.*, [2021 SCC Online SC 84].

8. On a specific query from the Court as to how visually impaired persons are able to enjoy films in a theatre, Mr. Bajaj submits that, in certain foreign countries, the theatres themselves make provisions for headphones to be plugged into the seats in the theatre, through which audio description is relayed in an audio format. However, in India, such facilities are not available in most film theatres. Despite this being the position, persons with visual impairment can enjoy the audio description of the films through certain mobile applications which can be downloaded on a smartphone, so long as the producer has an arrangement with the said mobile applications and provides the requisite audio description of the film to the application. It is submitted that there are two mobile applications available in India, namely, 'XL Cinema' and 'Shazacin', which provide such facilities for visually impaired persons.

9. On behalf of the Respondent No.1 - Producer - Yash Raj Films, Mr. Abhishek Malhotra, Id. Counsel makes the following submissions:

- i. The film 'Pathaan' has already been approved by the CBFC. At the time of approval, the Producer has already submitted the subtitles for the film in the English language. The Producer has also received the certification for the film, which is slated to be

released in theatres on 25th January, 2023.

- ii. The Producers have entered into an arrangement with the OTT platform - Amazon Prime Video, for the OTT release of the film 'Pathaan' which is stated to be scheduled on 28th April, 2023.
- iii. In principle, the stand of the Producers is that it would be willing to take any reasonable steps which may be required in order to ensure that its films are enjoyed by hearing and visually impaired persons as well.

10. On behalf of the Respondent Nos.2 and 3 - Ministries, it is pointed by Id. Counsel that the Ministry of Information and Broadcasting has issued certain directions to the Film Producers Association, as also, to the CBFC, way back in October, 2019, to use audio description and subtitles/closed captions in all films. Since he is appearing on advance notice, Id. Counsel wishes to seek instructions as to the actual status of the said directions which have been issued, and the implementation thereof.

11. None appears for Respondent No.4 - Amazon Seller Services Private Limited. Accordingly, issue notice to Respondent No.4 through all permissible modes.

12. Heard. This Court is of the opinion that the present petition raises very important issues as to the accessibility to various modes of entertainment for the hearing and visually impaired persons. A reading of Section 42 of the RPWD Act, 2016 shows that the Government has an obligation to take measures to ensure that all content is available in formats accessible to persons with disabilities. The said provision is set out below:

“42. Access to information and communication technology.—The appropriate Government shall take measures to ensure that,—

(i) all contents available in audio, print and electronic media are in accessible format;

(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;

(iii) electronic goods and equipment which are meant for every day use are available in universal design.”

13. In the context of films, the measures that can be taken by film producers to make them accessible to the hearing and visually impaired persons, are as under:

- **Audio description** - which implies the verbal depiction of key visual elements in media and live productions. This involves description of the visuals on screen to enable imagination by the hearing impaired;
- **Subtitling** - which provides a text alternative for the dialogue of video footage – the spoken words of characters, narrators and other vocal participants, in the original language itself, as also, in the dubbed language in case of dubbed movies; and
- **Closed Captions** - which not only supplement dialogue but other relevant parts of the soundtrack – describing background noises, phones ringing, and other audio cues that need describing,

These features would be integral to the enjoyment of films for persons with disabilities.

14. In view of the above, special measures would have to be taken for the hearing and visually impaired persons, inasmuch as the experience of watching a film in a movie theatre cannot be denied to persons with disabilities. This is particularly true in view of the fact that the technology for the same is readily available. As submitted by Mr. Bajaj, several films in the past, such as Dangal, Black, Munna Bhai MBBS, are stated to have incorporated audio descriptions, subtitles and closed captions for the hearing and visually impaired persons.

15. Thus, considering the reliefs sought, there are two aspects that would be required to be considered:

- i. Firstly, directions insofar as the film 'Pathaan' is concerned, to make the said film comply with the prescribed accessibility standards, to the extent possible; and
- ii. Secondly, an overall solution that has to be found to ensure the implementation of the statutory provisions and other directions, to make films disabled-friendly for the hearing and visually impaired.

16. The position of law as to the right to accessibility has been reiterated by Justice A.K. Sikri, speaking for the Supreme Court, in *Rajive Raturi v. Union of India*, [(2018) 2 SCC 413], wherein the Court observed as under:

“12) The vitality of the issue of ‘Accessibility’ vis-a-vis visually disabled persons’ right to life can be gauged clearly by this Court’s judgment in State of Himachal Pradesh & Anr. v. Umed Ram Sharma, where the right to life under Article 21 has been held broad enough to incorporate the right to accessibility. Relevant paragraphs of this judgment have been reproduced below:

“Read in the background of Article 38(2) every person has right under Article 19(1)(d) to move freely throughout the territory of India. He has also the right under Article 21 to his life which embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. Therefore, to the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication in reasonable conditions. Denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.

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13) Right to dignity, which is ensured in our Constitutional set up for every citizen applies with much more vigour in case of persons suffering from disability and, therefore, it becomes imperative to provide such facilities so that these persons also are ensured level playing field and not only they are able to enjoy life meaningfully, they contribute to the progress of the nation as well. In a recent judgment in *Jeeja Ghosh v. Union of India*, these aspects were highlighted by this Court in the following form:

37. The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the

constitutional value of human dignity are recognised. These are: (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption “Fundamental Rights”. One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfilment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak (former Chief Justice of the Supreme Court of Israel) in the following manner:

“The constitutional value of human dignity has a central normative role. Human dignity as a

constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the Constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right.”

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40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of

the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights. (See Report of United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability, 10-2-2001.)

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43. All these rights conferred upon such persons send an eloquent message that there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that refine and give detailed contextual content of those general guarantees. There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as

others. It is a sad commentary that this perception has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are not accepted in the mainstream either even when people sympathise with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which the disabled feel as their grievance is that others do not understand them.

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46. It is the common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them in employment, access to public spaces, transportation, etc. Persons with disability are the most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful attempts to assimilate them in the mainstream of the nation's life. The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented.”

17. Similar is the view taken by Justice D.Y. Chandrachud, speaking for the Supreme Court in ***Vikash Kumar v. UPSC and Ors., [2021 SCC Online SC 84]***, wherein the Court held that the State, as also, private parties are mandated to provide reasonable accommodation to persons with disabilities.

The relevant extracts of the said judgment are set out below:

“44 The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality – are an obligation as a society – to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember Justice R M Lodha’s (as he then was) observation in Sunanda Bhandare Foundation v. Union of India, where he stated:

“9...In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic...

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53. While most of the obligations under the 2016 RPwD Act are cast upon the government or local authorities, the Act and rules made under it have also imposed certain obligations on the private sector. The role of the private sector in the market has increased manifold since the advent of liberalisation in India. The RPwD Act 2016 recognizes that with the burgeoning role of the private sector in generating employment in India, an active responsibility has to be cast upon private

employers to create an inclusive workforce by providing persons with disabilities equal opportunities in the job market. However, the guarantee of equal opportunity must be accompanied by the provision of reasonable accommodation. The Rules framed under the 2016 RPwD Act stipulate that private establishments shall not discriminate against persons with disability on the ground of disability. It is to be noted that the definition of discrimination under Section 2(h) of the 2016 RPwD Act includes denial of reasonable accommodation. Private employers are mandated to frame an equal opportunity policy. Equal opportunity policies for establishments having more than 20 employees are required to include provisions relating to (i) appointment of liaison officers in establishments to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees; (ii) identification of posts/vacancies for disabled persons; (iii) provision of additional facilities and benefits such as training facilities, assistive devices, barrier free accessibility, preference in transfer and promotion, allotment of residential accommodation and special leave. The 2016 RPwD Act further provides that private establishments have to conform with accessibility norms stipulated by the Government with respect to building plans. The 2016 RPwD Act also provides that 5% of the workforce of establishments receiving incentives from the appropriate Government would be comprised of persons having benchmark disability.”

18. A perusal of the above judgments would show that accessibility is crucial and is enforceable as a legal right. Even private parties have to ensure that ‘reasonable accommodation’ measures are taken in order to enable greater accessibility for the hearing and visually impaired persons. Though accessibility in the case of **Rajive Raturi (supra)** is in the context of

access to buildings, transportation etc., accessibility to information, technology and entertainment, is equally important. A hearing or visually impaired person, may get easy physical access to a film theatre but may not be able to enjoy the film at all, if the measures to make it enjoyable are not taken by the other stakeholders, including producers, theatre managers, OTT platforms, etc. The State has an obligation to ensure that all steps, that are reasonably possible, are taken in this direction.

Interim Directions:

19. Thus, in the interim, it is directed as under:
 - a. Insofar as the theatrical release of the film 'Pathaan' is concerned, since the said film is slated for release on 25th January, 2023, no directions are being passed.
 - b. However, insofar as the release of the film 'Pathaan' on the Respondent No.4's 'Amazon' OTT platform is concerned, the following directions are issued:
 - i. The Respondent No.1 - Producer shall prepare the audio description, the subtitles in the Hindi language, as also, the closed captions in both English and Hindi languages, and submit that same to the CBFC for approval, by 20th February, 2023.
 - ii. Upon the same being submitted, the CBFC shall consider the re-certification of the film 'Pathaan', along with the audio description, the subtitles in the Hindi language, and the closed captions in both English and Hindi languages.
 - iii. CBFC shall take a decision on re-certification of the said film by 10th March, 2023.

- c. If the Respondent No.1 - Producer wishes to enable greater accessibility for the film 'Pathaan', in theatres, it may contact the operators of the mobile applications 'XL Cinema' and 'Shazacin', or other similar applications, if any, to explore the possibility of providing audio description, subtitles, and closed captions.
- d. Insofar as the issue of having an overall and holistic solution to the questions raised in the present petition is concerned, it is deemed appropriate to implead the Indian Broadcasting and Digital Foundation (IBDF) as Respondent No.5 in the present petition. In addition, the Indian Motion Pictures Producers' Association (IMPPA) shall also be impleaded in this matter as Respondent No.6. Issue notice to the newly impleaded Respondent Nos.5 and 6, without payment of process fee, through the following particulars:

Respondent No.5:

Indian Broadcasting and Digital Foundation (IBDF)

Address: C-301, C-302 & C-303, Ansal Plaza, Third Floor,
Khel Gaon Marg, New Delhi - 110 049, India.

Mobile No.: +91 11 4379 4400

Email: ibdf@ibdfindia.com

Respondent No.6:

Indian Motion Pictures Producers' Association (IMPPA)

Address: G-1 to 7, Crescent Tower, Off New Link Road

Oshiwara, Nr. Dhiraj Gaurav Heights, Andheri West
Mumbai, Mumbai City, MH 400053

Email: indiafilm@gmail.com

Phone No.: 022 62390666 / 022 62390777 / 022 62390888

Mobile No.: 8879031147 / 771507277

- e. Considering the nature of the reliefs sought in this matter, the Ministry of Electronics and Information Technology (MeitY) is also impleaded as Respondent No.2(a). Mr. Farman Ali, Id. Counsel accepts notice on behalf of Respondent Nos. 2(a) as well.
20. Let an amended memo of parties be filed on behalf of the Petitioners, within one week. Upon the amended memo of parties being filed, let the Registry serve notice to Respondent Nos.4, 5 and 6.
21. Let a status report be placed on record in respect of the directions issued above and in response to the writ petition, by Mr. Ali, Id. Counsel for Respondent Nos.2, 2(a) and 3, by the next date of hearing.
22. Let the counter affidavit be filed by Respondent No.1 - Yash Raj Films, within four weeks. Upon the service of notice by the Registry, the Respondent Nos.4, 5 and 6 shall also file their counter affidavits placing their stand before this Court, on or before 28th February, 2023. Rejoinders thereto, if any, be filed by the Petitioners, by 15th March, 2023.
23. List on 6th April, 2023, on top of the board in the advance list, for receiving the status report on behalf of the Respondent Nos.2, 2(a) and 3 - Union of India, as also, counter affidavits on behalf of Respondent Nos.1, 4, 5 and 6.

PRATHIBA M. SINGH
JUDGE

JANUARY 16, 2023
Rahul/AD