

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

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Date of decision: 7th January, 2015

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W.P.(C) No.112/2015

AJAY GAUTAM

..... Petitioner

Through: Petitioner in person.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Ms. Monika Arora, CGSC & Ms. Pallavi Shali, Advs. for UOI.
Ms. Zubeda Begum & Ms. Sana Ansari, Advs. for R-2.
Mr. Saikrishna Rajagopal with Mr. Sidharth Chopra & Ms. Savni Dutt, Advs. for R-4 to R-6.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks a restraint on the exhibition of the Hindi feature film / movie titled 'PK', whether it be in movie theaters or on the television, on the ground of the same hurting the religious sentiments of all the communities and mainly of Hindus and thereby violating the rights of Hindus under Articles 19(2) and 25 of the Constitution of India.

2. It is the case of the petitioner:
- (i) that certain sequences of the said feature film show many Hindu Gods and Goddesses in wrong perspective;
 - (ii) that after the release of the said feature film, due to large scale protests and demonstrations seeking ban on the film, the law and order situation has been affected;
 - (iii) that the said film makes a mockery of Hindu religion and ways of worship of Hindus;
 - (iv) that the movie defames and maligns the Hindu culture and religious practices and makes a satire on Hindu Gods and Saints and all of which hurts the religious sentiments of the Hindus;
 - (v) that the central character of the feature film played by the actor Aamir Khan, is of an alien stranded on earth who has lost his spaceship's remote control device and which he subsequently finds to be in possession of a self-styled 'Tapasvi Maharaj' played by actor Saurabh Shukla and who has started fooling people on the pretext of having found the same in Himalayas;

- (vi) that the movie then shows the central character along with female lead in the film played by actress Anushka Sharma confront the said Godman 'Tapasvi Maharaj' and with the assistance of a television channel show the people the true colours of the said self-styled Godman;
- (vii) that the central character of the film during his search for his remote control device is shown questioning various Hindu religious practices of offering donations at temples, idol worship, thereby mocking the century-old customs and sacred beliefs of Hindus;
- (viii) that the central character of the film is also shown sticking the pictures of Lord Hanuman and Lord Krishna on his face, in order to protect himself from slaps;
- (ix) that the film also shows Hindu Gods as 'laapata' (untraceable);
- (x) that in one sequence of the film, the central character makes the statement, of "God not working either for the reason of his battery having expired or on account of manufacturing defect";

- (xi) that the film also makes a satire of the Hindu practice of offering milk to Lord Shiva;
- (xii) that the film also makes fun of the Hindu practice of idol worship, 'shastang dandvat' and calls them 'andhviswas';
- (xiii) that the Film Censor Board should not have granted 'U/A' certificate to the said film as the theme of the film offends Hindu sentiments, religious practice and their faith and ways of worship and the right to propagate, profess and practice religion enshrined under Article 25 of the Constitution of India; the film is thus also violative of Guidelines 2(xii) and 2(xiii) of Film Certification Guidelines formulated by the Central Government;
- (xiv) that one of the members of the Central Board of Film Certification (CBFC) Panel which has given the 'U/A' certificate to the said film has a history of being biased towards certain filmmakers and the Secretary, Ministry of Information and Broadcasting, Government of India has suggested

disciplinary action against her; thus the certification granted to the film is not unbiased;

(xv) that another member of the Advisory Panel of the CBFC has also taken a stand that the certification accorded to the movie is not completely unbiased and that the possibility of the film hurting the religious feelings and sentiments of certain sections of the society cannot be ruled out; and,

(xvi) reliance is placed on *S. Rangarajan Vs. P. Jagjivan Ram* (1989) 2 SCC 574 laying down the standards to be applied for judging the film.

3. Learned ASG, appearing on advance notice, at the outset states that the petition is not maintainable for two reasons; firstly that W.P.(Crl.) No.155/2014 titled *All India Human Rights and Social Justice Front Vs. Union of India* preferred to the Supreme Court with respect to the same movie was dismissed *in limine* on 14th August, 2014 and secondly, on the ground that the remedy of appeal under the Cinematograph Act, 1952 is available to the petitioner.

4. However as far as we remember, the writ petition aforesaid before the Supreme Court was preferred with respect to the posters then released of the said movie and even prior to the movie / film was commercially released on 19th December, 2014. Learned ASG is unable to controvert this position. The dismissal *in limine* of the said writ petition by the Supreme Court thus cannot come in the way of our considering this petition, preferred after the movie has been released. Similarly, the remedy of appeal to the Appellate Tribunal constituted under Section 5D of the Cinematograph Act, on the basis whereof the jurisdiction of this Court under Article 226 is sought to be excluded, is contained in Section 5C of the Cinematograph Act and the language whereof suggests that the appeal thereunder can be preferred only by a person who had applied for a certificate in respect of a film. Learned ASG has thus not pressed further the said objection also (and thus the need for us to give a final word on this aspect does not arise).

5. The film, as per the petition, offends the religious sentiments of Hindus for the reason of showing a self-styled Godman preaching Hindu religion, in the garb thereof, fooling his followers. It is not the case of the petitioner that such self-styled Godmen do not exist or that several of them do indeed indulge in, for their own gains, fooling their followers. What the

movie / film thus depicts, is a reality of life. We fail to see as to how any objection can be taken by the petitioner thereto. Such Godman depicted in the film, even if of Hindu religion, cannot be confused with the Hindu religion. Making fun of or showing the said Godman in bad light cannot be said to be making fun of the Hindu religion or showing the Hindu religion in bad light.

6. Section 4 of the Cinematograph Act requires any person desirous of exhibiting any film to apply to the CBFC constituted under Section 3 of the said Act. Section 5B provides that a film shall not be certified for public exhibition, if in the opinion of the authority competent to grant the certificate, the film or any part thereof is against, (i) the interests of the security of the State; ii) friendly relations with foreign States; iii) public order; and, iv) decency or morality; (v) involves defamation or contempt of Court; or (vi) is likely to incite the commission of any offence. Sub-section (2) Section 5B empowers the Central Government to issue directions setting out the principles which shall guide the authority competent to grant certificate sanctioning films for public exhibition. In exercise of powers thereunder Guidelines For Certification Of Films For Public Exhibition have been formulated. The same describe the objective of film certification as to

ensure, (a) the medium of film remains responsible and sensitive to the values and standards of society; (b) artistic expression and creative freedom are not unduly curbed; (c) certification is responsible to social changes; (d) the medium of film provides clean and healthy entertainment; and (e) the film is of aesthetic value. Clause 2 of the said Guidelines requires the CBFC to *inter alia* ensure that “visuals or words contemptuous of racial, religious or other groups are not presented” and that “visuals or words which promote communal, obscurantist, antiscientific and antinational attitudes are not presented”. We do not find in the said Guidelines any other restriction vis-a-vis religion. The petitioner also, by referring to Guidelines 2(xii) and (xiii) of the Guidelines, admitted so. Mention may also be made of Guideline 2(xvii) which requires the CBFC to ensure that “public order is not endangered”. It would thus be seen that protection under the Guidelines is afforded to religion and not to the so-called self-styled Godmen.

7. The settled principle in this regard is that the effect of the allegedly offending words / visuals is to be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. We, recently, in *Nandini Tewari Vs. Union of India*

MANU/DE/2157/2014, while dealing with a Public Interest Litigation seeking direction, *inter alia*, to the respondent to delete the word ‘fanny’ from everywhere it appears/ed in the film ‘Finding Fanny’ on the ground that it will hurt the feelings of citizens of India, have *inter alia* held that if any such restrictions were imposed, the same could affect the constitutional right of the film maker and that our society is a very mature society and that there is no need to be so sensitive about such a thing.

8. The Supreme Court, in ***K.A. Abbas Vs. Union of India*** (1970) 2 SCC 780, held that 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 follies along with what is good; we must not look upon such human relationships as banned in toto and forever 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 that line is to be drawn where the average 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. Similarly in ***Bobby Art International Vs. Om Pal Singh Hoon*** (1996) 4 SCC 1, the Supreme Court held that a

film that illustrates consequences of a social evil necessarily must show that social evil.

9. The subject film thus, while showing the self-styled Godman called ‘Tapasvi Maharaj’ in the film as fooling his followers, is merely illustrating a prevalent social evil and to show the same has to necessarily show the ways adopted by him for doing so.

10. The allegations in the petition, insofar as making out a case of the film making fun of Hindu Gods and Goddesses, also in our view do not qualify as being contemptuous of any race or religion or as promoting communal attitude within the meaning of Guidelines supra. Clause 3 of the Guidelines (supra) provides for the film to be judged in its entirety, from the point of view of its overall impact. Having watched the film we can say, that if the objectionable sequences in the film to which reference is made in the petition are gauged in the context of the film in its entirety and the message which the film seeks to convey, we are unable to hold the film or any sequence thereof being contemptuous of the essential tenets and beliefs of Hindu religion or as promoting communal attitude. The said sequences have to be necessarily shown to illustrate the social evil prevalent.

11. We recently again had occasion to deal with the challenge, to the certification granted to another Hindi language feature film ‘Singham Returns’, also on the ground of maligning Hindu religion. Rather the counsel for the petitioner therein had prefaced his argument by stating that we should not allow our minds to be coloured by the plethora of recent incidents of such Godmen being involved in all kinds of not only illegal but immoral activities. We have in our judgment dated 19th November, 2014 in W.P.(C) No.7969/2014 titled *Dharmaprachar Sabha Vs. Union of India* dealing with the said challenge noted the said contention of the counsel for the petitioner therein and have observed that what is depicted in the film in fact exists in real life and held that a film that carries the message that the social evil is evil cannot be refused exhibition on the ground that it depicts the social evil and further held that only if the film extols the social evils or encourages it, the same can be held to be not entitled to certification for public viewing.

12. A feature film is a work of fiction and is exhibited for commercial purposes. Most films contain a warning / disclaimer that “none of the characters therein is based on any living or dead person and the resemblance if any is unintentional”. It is not the case of the petitioners that it is not so in

the subject film. Moreover, the film presents a view of our world, on certain aspects, from the eyes of an alien who is not familiar with our ways, culture and ethos and his reactions / responses thereto. The film, in its entirety, does not let its audience forget this. The film is thus clearly a work of fantasy.

13. The Constitution protects the right of the artist to portray social reality in all its forms. Some of that portrayal may take the form of questioning values and mores that are prevalent in society. The Supreme Court in *S. Rangarajan* supra has held that films are the legitimate and important medium for the treatment of issues of general concern and it is open to a producer to project his own message even if it is not approved of by others and that the State cannot prevent open discussion and open expression, even if hateful to its policies.

14. Recently, challenge on similar grounds as urged in this petition was also made to the exhibition of the film 'Goliyon Ki Raasleela: Ram-Leela' before several High Courts. The High Courts of Madhya Pradesh, Allahabad and Bombay, vide interim orders in the petitions making the said challenge had also restrained the exhibition of the said film. However the Supreme Court vide order dated 7th March, 2014 in SLP (C) Nos.7719-

7720/2014 stayed the operation of the interim orders of all the said High Courts. We may however record that the matter is still pending in the Supreme Court. A similar challenge was made to the film in this Court also in W.P.(C) No.6384/2013 titled *Rashtravadi Shiv Sena Vs. Sanjay Leela Bhansali Films Pvt. Ltd.* but was rejected by the Division Bench of this Court vide judgment dated 9th October, 2013. It was *inter alia* held that freedom of expression is of inestimable value in a democratic society based on the rule of law and that the effect of words, title and scenes in a film has to be judged from the standards of reasonable strong minded, firm and courageous man and not from that of a weak and vacillating mind. That petition, also filed in public interest, was held to be in abuse of the process of the Court and was dismissed with costs of Rs.50,000/-.

15. The challenge in this petition also is required to be considered in the context of the scope and spectrum of the Constitutional guarantee to the freedom of speech and expression. It cannot be doubted that the right to communicate and receive ideas, facts, knowledge, information, beliefs, theories, creative and emotive impulses by speech or by written word, drama, theatre, dance, music, film, through a newspaper, magazine or book is an essential component of the protected right of freedom of speech and

expression. Though pre-censorship vis-a-vis films is a restriction on such right but the test in our view to be applied is of “clear and present danger” applied by Holmes, J. nearly a century ago and which has been accepted in India. Free speech cannot be suppressed on the ground either that its audience will form harmful beliefs or may commit harmful acts as a result of such beliefs, unless the commission of harmful acts is a real close and imminent consequence of the speech in question. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The Supreme Court in *S. Rangarajan* (supra) defined the said nexus as equivalent of a spark in a powder keg.

16. Though the petitioner has pleaded that the continued exhibition of the film will lead to a law and order situation but there is no basis for such an apprehension. Also, the petitioner presumes that the Government is not capable of maintaining the law and order. Such an argument was rejected in *Prakash Jha Productions Vs. Union of India* (2011) 8 SCC 372 and it was held that it is responsibility of State to maintain law and order effectively and potentially and that in the garb of such a plea screening of the film which has been cleared by CBFC for screening, cannot be prohibited. We may also add that a mischievous creation of law and order

situation cannot be a ground for interfering with the certification of a film, if otherwise found to be in order.

17. We thus hold that the petitioner does not satisfy the test of ‘clear and imminent danger’ also.

18. The subject film has passed censorial muster by an expert statutory tribunal who have certified it as fit for viewing throughout India. The Supreme Court, in *Raj Kapoor Vs. State* (1980) 1 SCC 43, held that a certificate by a high powered Board of Censors with specialised composition and statutory mandate is not a piece of utter inconsequence; it is relevant material, important in its impact, though not infallible in its verdict. It was held that though the Courts are not barred from trying the case because the certificate is not conclusive but the same is to be not brushed aside. It was held that an act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed. The allegations made by petitioner do not make out any case for us to hold that the certification is not on merits or is biased. The allegations in this regard are vague. Merely because some member on the Advisory Panel of CBFC may have disagreed with a certification does not affect the certificate. We even otherwise do not

find any error in the decision of the CBFC of granting certificate for public viewing to the subject film. Dissenters of speech and expression have no censorial right in respect of the intellectual, moral, religious, dogmatic or other choices of all mankind and the Constitution of India does not confer or tolerate such individualized, hyper-sensitive private censorial intrusion into and regulation of the guaranteed freedom of others.

19. There is another aspect. The petitioner or for that matter none else can be a captive audience to the exhibition of the film. Seeing a film is of the own volition and conscious choice of the spectator and those offended by the content or the theme of the film are free to avoid watching the film.

20. We find that it is rather the petitioner who, without any basis, is assuming that the faith and belief of persons in their religion, whether it be Hindu or any other, is so frail as to be shaken or be scandalized by the depictions in the film to which objection is taken. The said assumption in our view is totally mistaken. Religion, in the positive sense is an active instrument to allow a person to achieve full development of his person in the non-material way. Religion binds a person to his conscience. The petitioner mistakes religion to be only the rituals of which it is alleged fun is made in the subject film. However what constitutes religion, as understood in our

Constitution (as per Ramaswamy, J. in *S.R. Bommai Vs. Union of India* (1994) 3 SCC 1) is what binds a man to the moral and basic principles regulating his life. It is quite distinct from freedom to perform external acts in pursuance to faith.

21. As far as the aspect of the subject film making fun of or laughing at certain religious rituals of Hindus is concerned, it is often said that “Humor is, in fact, prelude to faith; and laughter is the beginning of prayer”. The saintliest men frequently have a humorous glint in their eyes; they retain the capacity to laugh at both themselves and at others. Russell Heddendorf, Professor of Sociology in his book ‘From Faith to Fun: The Secularization of Humor’ has observed that religion and humor overlap as world views. Both deal with paradox but in different ways. When science offers no reasonable explanation, people turn to some religion for an answer. For the believer, paradox is best understood and resolved by faith which precedes the resolution of the paradox. For the unbeliever, paradox may be interpreted with laughter of disbelief. Both imply some moral values in the perspective they take. Each, in its own way interprets the reality of daily life. Religion relies on faith and humour on fantasy, with each performing important function for society.

22. We may add that humour cannot be divorced from reality. We can laugh only in the context of what is known to us and not in abstract. If it were to be held that there can be no contextual humour as the same is bound to be considered to be offensive by someone or the other in the know of the context, there indeed would be no humour and it will indeed be a sad day. A cartoonist has gone to the extent of quipping, without humour we are all dead.

23. The sequences of the film to which objection is taken are in the nature of a satire bordering on parody, on certain Hindu customs and practices. A parody or a satire attach itself to already established genre conventions making a presentation's underlying structure obvious and turning the text against itself. A parody and / or satire thus in a way help define the basic genre through ironic contrast and provoking a new hegemonic device understanding of that genre. The said sequences in the film can thus also be seen as socially beneficial, helping a better understanding of the religion. Lies made in the context of satire and imaginative expression are not really lies at all and perhaps not really even statements of fact because no reasonable listener could actually believe them to be stating actual facts.

24. It is also not as if Hindu religion is without any humour. Dr. Koenraad Elst, an Indologist of Belgian origin in his study titled 'Humour in Hinduism' to be found in the book 'Humour and Religion: Challenges and Ambiguities' has dealt in detail on the subject citing illustrations and wherefrom it can be safely concluded that humour is to be found in many places in an overview of history of Hinduism contained in the Vedas, Puranas and in the fable collection. The same highlight the human side of both, Gods and men. Humour is to be very prominently found even in discourses of Yogis. A true Yogi is cheerful and communicates that mood to his audience directly through his charisma as well as verbally through witty similes. We find the humour used in the film in the context of religion as a way of revealing the really real to us breaking through social conventions and exposing a profound, cosmic truth.

25. Moreover, in a diverse country as ours, citizens and residents whereof profess nearly all religions, people are used to a high level tolerance in the matters of religion and sequences of the film to which objection is taken are not found to be surpassing such tolerance levels. The more devoted a person in his religious belief, the greater should be his spirit of tolerance. Our country enjoys a shared membership of human race and our future depends

on tolerance of distinctions that mark the richness and diversity of the plural community of man which this country enjoys. According to Prof. Amartya Sen, the prospect of peace in the contemporary world lies in the recognition of plurality of our affiliations rather than living as inmates incarcerated in little containers. The unity of this country is an assumption of tolerance and a symbiosis of diversity. Freedom of speech and expression contributes to the richness and equilibrium of the country. There is nothing in the religion particularly the Hindu religion which prohibits free speech or debate or dissent. Infact every religion has variations even of dogma.

26. The present petition is an instance of a growing tendency in the country of intolerance and which tendency has to be nipped in the bud and unless done so, is likely to spread like wild fire and which the country can ill-afford.

27. We, from the arguments made by the petitioner appearing in person are also of the view that the real grievance of the petitioner is not of the storyline of the film being offensive to Hindu religion but of being in the context of Hindu rather than any other religion. The choice of an artist to in the storyline refer to one and not other religion cannot be interfered with. The storyline of the film

did not permit the artist to deal with all the religions. It is rather such feelings of the petitioner which are disruptive and not the sequences of the film to which objection are taken.

28. The petitioner lastly contended that the High Court of Allahabad has issued notice in a petition filed therein making a similar challenge and taking cue from the contention of the ASG, stated that he be allowed to pursue the remedy of appeal before the appellate authority.

29. We however, after the petitioner availed of a chance before us cannot allow the petitioner to avoid a finding against him. The petitioner cannot be allowed to indulge in forum shopping.

30. Resultantly, we do not find any merit in the petition and dismiss the same. We refrain from imposing any costs on the petitioner.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

JANUARY 07, 2015

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