

UNION OF INDIA
v.
K.M. SHANKARAPPA

NOVEMBER 28, 2000

[V.N. KHARE AND S.N. VARIAVA, JJ.]

Cinematograph Act, 1952—Sections 5D; 6(1)—Constitutional validity of—Held, it is not constitutionally valid as the Government cannot sit in an appeal or review a judicial order passed by the Tribunal.

Before introduction of section 5D to the Cinematograph Act, 1952, an appeal from a decision of the Board could be made to Central Government. An Appellate Tribunal was constituted by introducing section 5D pursuant to the decision in *K.A. Abbas v. Union of India AIR, (1971) S.C. 481*. The tribunal was an expert body which had been set up. Besides, it has been set up for the purposes of considering amongst other things, the effect of films on the public. However, Government still sought to retain review and/or revision powers over the decisions of the Tribunal through enactment of Section 6(1) in the Act.

Respondent filed a Writ Petition before the High Court challenging the constitutional validity of section 3(1), 4(1), 5D, 6(1) and 7(1) of the Act. High Court held Sections 3(1), 4(1), 5D, and 7(1) to be constitutionally valid, the High Court held portions of Sections 6(1) to be unconstitutional.

In appeal to this Court, Union of India contended that the review and/or revision of the order of the Tribunal by the Central Government is necessary because on certain occasions, it was found that after the film has been cleared by the Board or by the Tribunal, there had been public resentment to the film which led to law and order situations. The Government further contended that under the Constitution there is no strict separation of power and that judicial functions could also be discharged by the Central Government by way of conferment of revisional powers.

Dismissing the appeal, the Court

HELD: 1.1 Government has chosen to establish a quasi-judicial body, which has been given the powers, *inter alia*, to decide the effect of film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of

A a retired judge of a High Court or a person qualified to be a judge of High Court and other experts in the field, gives its decision, that decision would be final and binding so far as the Executive and the Government are concerned. To permit the Executive to review and/or revise that decisions would amount to interference with the exercise of judicial functions by a quasi-judicial Board.

B It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the Executive. Under the Constitution the position is reverse. The Executive has to obey judicial orders. Thus, Section 6(1) of the Cinematograph Act, 1952 is a travesty of the rule of law, which is one of the basic structures of the Constitution. [120-G-H; 121-A]

C 1.2. The Legislature may, in certain cases, overrule or nullify the judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the Executive or the Legislature cannot set at naught a judicial order. The Executive cannot sit in an appeal or review a judicial order. The Appellate Tribunal consists of experts and decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or

D revision over those decisions. At the highest, the Government may apply to the Tribunal itself for review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal. [121-C]

E 1.3. 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. It is for the concerned State Government to see that the law and order is maintained. In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view from that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the Executive to review or revise a

F decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate action against persons who choose to breach the law. [121-E]

K.A. Abbas v. Union of India AIR, (1971) SC 481, referred to.

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3106 of 1991.

From the Judgment and Order dated 2.4.1990 of the High Court of Karnataka, Bangalore in Writ Petition No. 4335 of 1979.

H N.N. Goswami, K.K. Dhawan for S.N. Terdol for the Appellant.

The Judgment of the Court was delivered by

VARIAVA, J. This Appeal is against a Judgment dated 2nd April, 1990 in Writ Petition No. 4335 of 1979.

The Respondent (herein) had challenged the virus of certain provisions of the Cinematograph Act, 1952 (hereinafter called the said Act) as amended by Act No. 49 of 1981. In the Writ Petition the challenge was to the constitutional validity of Sections 3(1), 4(1), 5D, 6(1) and 7(1). By the impugned Judgment Sections 3(1), 4(1), 5D and 7(1) were held to be constitutionally valid. However, portions of Section 6(1) have been held to be unconstitutional and those portions have been struck down.

It must be mentioned that, in the case of *K. A. Abbas v. Union of India*, reported in AIR (1971) S.C. 481, the validity of certain provisions of the said Act had been challenged, *inter alia*, on the ground that an appeal from a decision of the Board should lie to a Court or to an independent Tribunal and not to the Central Government. The Solicitor General made a statement that the Government would appropriately amend the Act to set up a Tribunal. This Court commented as follows:

“We express our satisfaction that the Central Government will cease to perform curial functions through one of its Secretaries in this sensitive field involving the fundamental right of speech and expression. Experts sitting as a Tribunal and deciding matters quasi-judicially inspire more confidence than a Secretary and therefore, it is better that the appeal should lie to a court or Tribunal.”

It is pursuant to this statement and in keeping with the opinion expressed by this Court that the Tribunal was established. Section 5C of the said Act now provided for an appeal to a Tribunal. Section 5D now provided that the Government is to constitute an Appellate Tribunal. The Tribunal is to consist of a Chairman and not more than four other members. The Chairman of the Tribunal is to be a person who is a retired Judge of a High Court, or a person who is qualified to be a Judge of a High Court. The other members should be such persons who are qualified to judge the effect of the film on the public. Thus the Tribunal is an expert body which has been set up for the purposes of considering, amongst other things, the effect of the films on the public. However the Government still sought to retain powers by enacting Section 6(1).

For a better understanding of the question under consideration, it would be appropriate to set out Section 6(1). It reads as follows:

A “6(1): Notwithstanding anything contained in this part, the Central Government may, of its own motion, at any stage, call for the record of any proceeding in relation to any film which is pending before, or has been decided by, the Board, or as the case may be, decided by the Tribunal (but for including any proceeding in respect of any matter which is pending before the Tribunal) and after such inquiry, B into the matter as it considers necessary, make such order in relation there to as it thinks fit, and the Board shall dispose of the matter in conformity with such order:

C Provided that no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted, as the case may be, except after giving him an opportunity for representing his views in the matter:

D Provided further that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against public interest to disclose.”

E Thus even after establishing the Appellate Tribunal, by means of Section 6(1), the Central Government sought to retain with it the power to make such orders as it thought fit. In effect what the Government is seeking to do is to exercise power of review or revision over the decisions of the Board or the Tribunal.

F Mr. Goswami sought to submit that it was necessary to retain such a power because it has been found that on certain occasions, after the film has been cleared by the Board or by the Tribunal, there was public resentment to the film and law and order situations arose. He submitted that such a situation would necessitate a review and/or revision of the order passed by the Tribunal. He submitted that under our Constitution there was no strict separation of powers. He submitted that judicial functions could also be discharged by the Central Government by way of conferment of revisional powers.

G We are unable to accept the submission of the learned counsel. The Government has chosen to establish a quasi-judicial body which has been given the powers, *inter alia*, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final H and binding so far as the Executive and the Government is concerned. To

permit the Executive to review and/or revise that decision would amount to interference with the exercise of judicial functions by a quasi-judicial Board. It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the Executive. Under our Constitution the position is reverse. The Executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The Legislature may, in certain cases, overrule or nullify the judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the Executive or the Legislature cannot set at naught a judicial order. The Executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts and decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal.

We fail to understand the apprehension expressed by the learned counsel that there may be a law and order situation. 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. It is for the concerned State Government to see that the law and order is maintained. In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view, from that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the Executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law.

We, therefore, see no substance in the Appeal. The same stands dismissed. There will, however, be no Order as to costs.

B.S.

Appeal dismissed.