

DIRECTORATE OF FILM FESTIVALS AND ORS.

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v.

GAURAV ASHWIN JAIN AND ORS.

APRIL 11, 2007

[TARUN CHATTERJEE AND R.V. RAVEENDRAN, JJ.]

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Constitution of India—Article 14 & 19(1)(a)—Cinematograph Act, 1952—Sections 4, 5A, 5B & 9—Regulations providing requirement of certification of films by Central Board of Film Certification for entry to National Film Awards and exempting such requirement for films produced by Film Institutes and films entered by Doordarshan—Writ Petition by film makers challenging the requirement of certification was allowed by High Court—Correctness of—Held, Government's policy to restrict entry for National Film Awards only to those films certified by the Board for public exhibition is a reasonable restriction under Article 19(2) of the Constitution and therefore constitutional—Wisdom or soundness of such policy decision cannot be subject to judicial review—Purpose and object of Film Festivals and National Film Awards are different and hence, cannot be a basis for seeking similar exemption of certification—Exemption of requirement of certification for films produced by Film Institutes and entries made by Doordarshan is illegal under the Act but a similar illegal exemption cannot be claimed without challenging such exemption.

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Appellant-Directorate of Film Festivals under the Ministry of Information and Broadcasting organizes National Film Awards every year. The awards are given to feature films as also non-feature films. Respondents, who were documentary film makers, intended to enter the Non-Feature Films category for the National Awards for a particular year but were aggrieved with eligibility requirements prescribed by the Directorate, for non-feature films, in Regulation 10(e) of the National Film Awards Regulations that the films should have been certified by the Central Board of Film Certification. Regulation 10(d) stipulated similar requirements for feature films. The respondents filed Writ Petition before High Court seeking declaration that Regulation 10(d) and (e) of the National Film Awards Regulations were violative of Article 14 and 19(1)(a) of the Constitution. The respondents contended that as the entries for National Film Awards did not involve any public exhibition

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A and were viewed only by a select jury, there was no need for certification by the Board under the Cinematograph Act, 1952 and hence restricting the entry to only films certified by the Board is an unreasonable restriction on the fundamental right of the film makers violative of Article 19(1)(a) of the Constitution; that if the films could be entered in Film Festivals without certification from the Board, there is no reason why they should not be so entered for the National Film Awards; and that by exempting films produced by Film Institutes and entries made by Doordarshan from the requirement of certification by the Board while insisting on such certification by the Board in the case of other films for entry for the National Film Awards is discriminatory violating Article 14 of the Constitution. The High Court allowed the Writ Petition. Hence the appeal before this Court.

Allowing the appeal, the Court

HELD: 1.1. The right of a film maker to make and exhibit his film is a part of his fundamental right of freedom of speech and expression under Article 19(1)(a) of the Constitution of India. A film is a medium for expressing and communicating ideas, thoughts, messages, information, feelings and emotions. It may be intended either for public exhibition or purely for private use. The requirement under sections 4 and 5A of the Cinematograph Act, 1952 relating to certification by the Central Board of Film Certification, where the film is intended for public exhibition, by applying the guidance principles set out in section 5B, is a reasonable restriction on the exercise of the said right of speech and expression contemplated under Article 19(2) and therefore constitutional. [Para 13] [17-G-H; 18-A]

K.A. Abbas v. Union of India, AIR (1971) SC 481; *S. Rangarajan v. P. Jagjivan Ram*, [1989] 2 SCC 574 and *Life Insurance Corporation of India v. Manubhai D. Shah*, [1992] 3 SCC 637, referred to.

1.2. The scope of judicial review of governmental policy is well defined. Courts do not and cannot act as Appellate authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy and not the wisdom or

soundness of the policy is the subject of judicial review. [Para 14] [18-D-E] A

Asif Hameed v. State of J&K, [1989] Supp. 2 SCC 364; *Shri Sitaram Sugar Co. Ltd. v. Union of India*, [1990] 3 SCC 223; *Khoday Distilleries v. State of Karnataka*, [1996] 10 SCC 304; *Balco Employees Union v. Union of India*, [2002] 2 SCC 333; *State of Orissa v. Gopinath Dash*, [2005] 13 SCC 495 and *Akhil Bharat Goseva Sangh v. State of Andhra Pradesh*, [2006] 4 SCC 162, referred to. B

1.3. The Government's policy for National Film Awards is to restrict entry to only those films which have been certified by the Board for exhibition, that is films intended for public exhibition. The Government is not interested in evaluating or giving an award to a film which may never be seen by the public, or at all events never be seen in an 'uncensored' form. Its object is to select the best from among those which the public can see and enjoy or gain knowledge. The said policy neither relates to nor interferes with the right of a film maker either to make films, or to apply for certificate or to exhibit the films. There is nothing illogical, unreasonable or arbitrary about a policy to select only the best from among films certified for public exhibition. This Court, cannot in judicial review, change that policy by requiring the Government to select the best among 'films made' instead of 'films made and certified for public exhibition'. The requirement that films should have been certified by the Central Board of Film Certification for entry for the National Film Awards is not an unreasonable restriction of any fundamental right of the respondents or other film makers. [Para 15] [18-G-H; 19-A-B] C D E

1.4. The object of Film Festivals and the object of National Film Awards are different. Film Festivals are held, to provide a platform for film makers from all over the world to meet, exchange ideas, explore the possibility of co-production, market films and to broaden the vision of film makers. On the other hand, the object of National Film Awards is to encourage the production of films of aesthetic and technical excellence and social relevance, which will contribute to the understanding and appreciation of cultures of different regions of the country and promote national integration and unity. When the purpose and object of Film Festivals and National Film Awards are completely different, the conditions that are made applicable, or the exemptions that are granted, in respect of Film Festivals, cannot automatically be applied to National Film Awards. The two being unequal and dissimilar, the question of applying the same standards or norms do not arise. Nor can application of different norms to Film Festivals and National Film Awards, lead to a complaint F G H

A of discrimination. Applying different yardsticks to different events, to achieve different objects cannot be considered as discriminatory. [Para 18] [20-D-G]

B 1.5. In law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law. [Para 20] [21-C]

C *Chandigarh Administration v. Jagjit Singh*, [1995] 1 SCC 745 and *Gurcharan Singh v. New Delhi Municipal Committee*, [1996] 2 SCC 459, relied on.

D 1.6. There are no special circumstances for exempting the films entered by Doordarshan. The exemption given under Regulation 10(g) of the National Film Awards Regulations is not for films made by Doordarshan, but films entered by Doordarshan. This means that any film made by any independent film maker when entered by Doordarshan becomes eligible without certification by the Board. It is also to be noted that Regulation 10(g) requires a certificate from the Director General, Doordarshan that the non-feature film has been produced within the eligibility period, but does not require a certificate from the Director General that the film entered has been viewed by him and it complies with the principles/guidelines relating to certification under section 5B of the Act. In the circumstances, this Court does not find any basis for a classification treating entries by Doordarshan as a special class requiring exemption. [Para 24] [24-E-G]

F 1.7. The exemptions in favour of films made by Film Institutes and films entered by Doordarshan will amount to recognizing the Heads of such institutes or institutions as equal to Central Board for Film Certification and entrusting the Heads of such institutions with the power of Central Board for film certification. Appellants have not placed any material justifying reposing of such confidence in persons other than the Central Board for Film Certification. Nor can such parallel authorities be recognized, having regard to the provisions of the Cinematograph Act. Further exemption under Regulations 10(f) and (g) cannot be equated to exemption under section 9 of the Act. Hence, the exemptions in favour of Film Institutes and entries made by Doordarshan were illegal and other film makers cannot claim similar exemption. [Para 25] [24-H; 25-A-B]

H 1.8. A film maker can challenge an illegal exemption in favour of Film

Institutes and Doordarshan under clauses 10(f) and (g) of the Regulations but cannot claim a similar exemption by placing reliance on such illegality. Therefore, the challenge to the words "and certified by the Central Board of Film Certification" in Regulation 10(d) and (e) has no merit. The respondents have not challenged the validity of Regulation 10(f) and (g) granting exemption to films made by Film Institutes or films entered by Doordarshan. Therefore, no relief can be granted to the respondents in that behalf.

[Para 26] [25-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1892 of 2007.

From the Judgment and Order dated 27.07.2006 of the High Court of Judicature at Bombay in C.W.P. No. 1448 of 2006.

Vikas Singh, A.S.G., Indra Sawhney and V.K. Verma for the Appellants.

Prashant Bhushan, Indra Unninar and Parul Kaur Majethia for the Respondents.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. Leave granted.

The judgment dated 27.7.2006 of the Bombay High Court in W.P. No.1448 of 2006 is under challenge in this appeal.

2. The Directorate of Film Festivals under the Ministry of Information & Broadcasting organizes National Film Awards ('NFA' for short) every year, on behalf of the Government of India. The awards are given to feature films as also non-feature films. The respondents who are documentary film makers, intended to enter their Non-Feature Films for the 53rd National film Awards for the year 2005. Respondents were aggrieved by the following two eligibility requirements prescribed by the Directorate, for non-feature films, in clause (e) of Regulation 10 of the 53rd NFA Regulations : (i) that the films should have been certified by the Central Board of Film Certification ('Board' for short); and (ii) that the films should have been released only on a film (celluloid) format, even if they were shot in digital format. Clause (d) of Regulation 10 stipulated similar requirements in regard to feature films. The Respondents, therefore, filed WP No.1448/2006, seeking a declaration that Regulations 10(d) and (e) of the 53rd National Film Award Regulations were violative of Articles 14 and 19(1)(a) of the Constitution. They also sought a consequential declaration that films made and released on either 'film format' or 'digital format' are eligible for entry, without any certification by the Board.

A *Reasons for the First Grievance*

3. The Respondents submitted that films are works of art, made in exercise of the fundamental right of speech and expression. Films are accepted as entries for awards and for exhibition in International Film Festivals all over the world, without any kind of censorship so that the select audience can view the films in their pristine form and appreciate the creative talent of the film makers as also the theme and content of the films. Recognizing the said tradition, the Ministry evolved a policy in respect of non-commercial Film Festivals and exempted all entries from the requirement of certification by the Board. As the entries for National Film Awards did not involve any public exhibition, and were viewed only by a select jury (consisting of persons distinguished in the fields of cinema and allied arts and humanities), there was no need for certification by the Board under the Cinematograph Act, 1952 ('Act' for short). If films could be entered in Film Festivals (where the audience consist of not only Juries, but also film-makers, film media students, critics, film theorists, film lovers) without certification from the Board, there is no reason why they should not be so entered for NFAs (where the audience consisted of only the Jury).

4. It was also submitted that films made by the Film Institutes and films entered by Doordarshan for NFAs were exempted from the requirement of certification by the Board. The logic for exempting those films applied equally to other films also. The action of the Directorate in exempting films produced by Film Institutes and entries made by Doordarshan from certification while insisting on such certification by the Board in the case of other films for entry for NFAs amounted to hostile discrimination.

F *Reasons for the Second Grievance*

5. According to the respondents, most non-feature films are shot and released in digital format, a far superior technology when compared to film format. Non-feature films, being non-commercial, are rarely screened in cinema theatres. They are mostly screened on television or to select audiences, which does not require conversion into film format. It is, therefore, a sheer waste of resources to convert non-feature films shot in digital format into film format, only for the purpose of entry in National Film Awards. Conversion from digital to a film (celluloid) format involves huge expenditure and most of the independent documentary film-makers, who operate on a tight budget, cannot afford the expense of conversion. It was submitted that restricting entry to only films released on film format, would prevent most of the non-feature films

from being entered for National Film Awards.

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Decision of the High Court

6. When the said writ petition was taken up for hearing by the High Court, the appellants herein (respondents in the writ petition) submitted that the Directorate had decided to accept the entry of non-feature films on digital format. Therefore, the sole issue that required consideration related to the requirement of a certificate by the Central Board for NFA entries.

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7. The High Court held that there was no difference between films entered for awards in Film Festivals and films entered for National Film Awards; that there was also no difference between films produced by Film Institutes/Doordarshan and films produced by others, for purposes of entry for National Film Awards; and that the requirement relating to certification by Board in respect of film makers other than Film Institutes and Doordarshan amounted to hostile discrimination. It, therefore, allowed the writ petition by its judgment dated 27.7.2006 holding that the words “and certified by the Central Board of Film Certification” in Regulations 10(d) and (e) were violative of Article 14 and void, and the said two clauses should be read without those words. The High Court however, reserved liberty to appellants to impose a condition similar to Regulation 8 of the Mumbai International Film Festival, 2006 (‘MIFF-2006’ for short) which read as follows :

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“Selection of films/videos for Competition will be made by a Committee whose decision will be final. However, Festival Authorities reserve the right to accept or not to accept any film, if it is likely to offend the feelings and sensibilities of any country and/or promote racism or any other reason Festival Authority consider to be sufficient for acceptance or non-acceptance of a film/video.”

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The High Court directed the Appellants to permit film-makers to enter their films in digital format without any certification from the Central Board of Film Certification. As the High Court found that the requirement relating to certification by the Board was violative of Article 14 and therefore, invalid, it did not examine the issue with reference to Article 19(1)(a).

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Questions for consideration

8. Being aggrieved by the said decision of the High Court, the Directorate of Film Festivals (NFA), Ministry of Information & Broadcasting, Government

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A of India, have filed this appeal by special leave. On the rival submissions, the following three questions arise for consideration:

B (i) Whether restricting the entry, for National Film Awards, to only films certified by the Central Board of Film Certification, is an unreasonable restriction on the fundamental right of film makers, violative of Article 19(1)(a) of the Constitution.

(ii) Whether the Directorate, having permitted entry of films in an uncensored format for awards in Non-Commercial Film Festivals, should do so in respect of National Film Awards also.

C (iii) Whether exempting films made by Film Institutes and films entered by Doordarshan from the requirement of certification by the Board, while requiring certification by the Board in the case of others, is discriminatory, violating Article 14 of the Constitution.

Legal Provisions

D 9. The relevant provisions of the 53rd National Film Award Regulations, which regulated the eligibility for entry for awards and the procedure for selection for Awards, are:

“Aims

E 2. The Awards aim at encouraging the production of films of aesthetic, and technical excellence and social relevance contributing to the understanding and appreciation of cultures of different regions of the country in cinematic form, thereby also promoting integration and unity of the nation.”

F *Eligibility*

G “10.(a) Only those persons whose names are on the credit titles of the film and are normally residing and working in India shall be eligible for the Awards. The film should have been produced in India. In the case of co-productions involving a foreign entity, the following conditions should be fulfilled :-

(a)

(b) *The film should have been certified by the Central Board of Film Certification between 1st January 2005 and 31st December 2005.*

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(c) The Director of the film should be an Indian national. A

(d) Films made in any Indian language, shot on 16 mm, 35 mm or in a wider gauge or digital format but released on a film format *and certified by the Central Board of Film Certification* as a feature film or featurette are eligible for feature film section. In the case of award for Best Children's Film only such films shall be eligible as have been *certified by the Central Board of Film Certification* as Children's films..... B

(e) Films made in any Indian language, shot on 16 mm, 35 mm or in a wider gauge or digital format but released on film format *and certified by the Central Board of Film Certification* as a Documentary/ Newsreel/Non-Fiction/Short-Fiction are eligible for non-feature film section..... C

(f) *A film produced by a film institute running diploma/degree courses run by it which are recognized by the Government of India shall be eligible even without certification by the Central Board of Film Certification, provided a specific certificate from the Head of the organization to the effect that the film has been produced within the eligibility period, is sent along with the entry form.* D

(g) *Entries made by Doordarshan for the non feature film section shall be eligible without certification by Central Board of Film Certification provided that a specific certificate, from Director General, Doordarshan to the effect that the non feature film has been produced within the eligibility period, is sent along with the entry form.* E

(h) & (i) .. F

(j) All entries should be in the version certified by the Central Board of Film Certification, except films as per provisions of clause (f) and Clause (g) above." G

Last date for receipt of entry :

13. Last date for receipt of the application along with the print in the Directorate of film Festivals shall be the 19th May, 2006.

Procedure for selection :

"19. (a) The Awards shall be decided by two juries, one for feature H

A films and other for non-feature films, duly constituted by the Directorate with the approval of the Government of India.

(b) The Jury for Feature films shall comprise a Chairperson and not more than 16 members distinguished in the field of cinema, other allied arts and humanities.

B (c) The Jury for Non Feature Films shall comprise a Chairman and not more than 6 members distinguished in the field of cinema, other allied arts and humanities.

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C 25. The juries shall have the discretion to recommend that an award in any particular category may not be given if they are of the opinion that the entries in that category are not of the required standard."

D 10. Certification of films for exhibition and regulation of exhibition by means of cinematograph is governed by the Cinematograph Act, 1952 ('Act' for short). Part II of the Act relates to certification of films for public exhibition. Section 3 provides for constitution of the Board of Film Certification (earlier known as Board of Film Censors). Sections 4 and 5A provide for examination and certification of films. They require any person desiring to exhibit any film, to make an application to the Board for a certificate. The Board, after examining

E the film, can sanction the film for unrestricted public exhibition, or for public exhibition restricted to adults, or 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. The Board can also direct the applicant to carry out excisions or modifications or even to refuse sanction of the film for public

F exhibition. Section 5B lays down the principles for guidance in certifying films. Sub-section (1) thereof 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 of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign

G States, public order, decency or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence. Sub-section (2) authorizes the Central Government to issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under the Act in sanctioning films for public exhibition subject to the provisions of sub-section (1). Section 9 relates to power to exempt and is extracted below :

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“The Central Government may, by order in writing exempt, subject to such conditions and restrictions, if any, as it may impose, the exhibition of any film or class of films from any of the provisions of this Part or any rules made thereunder.”

Re : Point (i)

11. The object of the National Film Awards is to encourage the production of films of aesthetic and technical excellence and social relevance contributing to the understanding and appreciation of cultures of different regions of the country in cinematic form, and thereby, also to promote nation's integrity and unity. This object is sought to be achieved by selecting the best of Indian films made for public exhibition in various categories and giving them National Awards. As this is an annual event, the entries are restricted to films certified by the Central Board of Film Certification during the previous year. The 53rd National Film Awards were thus restricted to films certified by the Central Board of Film Certification between 1.1.2005 and 31.12.2005. The last date for entries for NFA was 19.5.2006. This means that most of the films that were entered, would have been released for public exhibition before the last date prescribed for entry (except those which are not released for public exhibition due to non-availability of distributors, exhibitors, theaters or other reasons).

12. Under the Cinematograph Act, 1952, a film can be released for public exhibition only if it has been examined and certified by the Central Board of Film Certification as being suitable for public exhibition under the categories 'unrestricted' or 'restricted to adults' or 'restricted to members of any profession or class of persons'. The decision to consider for awards, only those films which are certified by the Board for public exhibition is a policy of the Ministry. This policy has two underlying objectives. The first is to consider only films which have been released or capable of being released for public exhibition. The second is to consider the films in the form in which they will be seen by the public.

13. The right of a film maker to make and exhibit his film, is a part of his fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution. A film is a medium for expressing and communicating ideas, thoughts, messages, information, feelings and emotions. It may be intended either for public exhibition (commercial or non-commercial) or purely for private use. The requirement under sections 4 and 5A of the Act relating to certification by the Board, where the film is intended for public exhibition, by applying the guidance principles set out in section 5B, is a reasonable

- A restriction on the exercise of the said right of speech and expression contemplated under Article 19(2), and therefore, constitutional [vide *K. A. Abbas v. Union of India*, AIR (1971) SC 481, *S. Rangarajan v. P. Jagjivan Ram*, [1989] 2 SCC 574, and *Life Insurance Corporation of India v. Manubhai D. Shah*, [1992] 3 SCC 637]. But the question here is not whether the requirement that films can be released for public exhibition, only if they possess a certificate issued by the Central Board of Film Certification, is a reasonable restriction. The question is whether the Government can impose a condition that the entry of films for awards will be restricted to only those which possess a certificate issued by the Board under section 5A of the Act. Whether the government should encourage the production of films with aesthetic and technical excellence and social relevance, whether such encouragement should be by giving awards periodically or annually, and if it decides to give such awards, whether the field of competition should be restricted only to films which have been certified by the Board, are all matters of policy of the Government.
- D 14. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review [vide : *Asif Hameed v. State of J&K*, [1989] Supp 2 SCC 364; *Shri Sitaram Sugar Co. Ltd., v. Union of India*, [1990] 3 SCC 223; *Khoday Distilleries v. State of Karnataka*, [1996] 10 SCC 304, *Balco Employees Union v. Union of India*, [2002] 2 SCC 333, *State of Orissa v. Gopinath Dash*, [2005] 13 SCC 495 and *Akhil Bharat Goseva Sangh v. State of Andhra Pradesh*, [2006] 4 SCC 162].
- G 15. The Government's policy for National Film Awards is to restrict entry to only those films which have been certified by the Board for exhibition, that is films intended for public exhibition. The government is not interested in evaluating or giving an award to a film which may never be seen by the public, or at all events never be seen in an 'uncensored' form. Its object is to select the best from among those which the public can see and enjoy or

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gain knowledge. The said policy neither relates to nor interferes with the right of a film maker either to make films, or to apply for certificate or to exhibit the films. There is nothing illogical, unreasonable or arbitrary about a policy to select only the best from among films certified for public exhibition. We cannot, in judicial review, change that policy by requiring the Government to select the best from among 'films made' instead of 'films made and certified for public exhibition'. We, therefore, hold that the requirement that films should have been certified by the Central Board of Film Certification between 1.1.2005 and 31.12.2005 for entry for the 53rd National Film Awards is not an unreasonable restriction of any fundamental right of the respondents or other film makers.

Re : Point (ii)

16. We will next consider whether requirement relating to certificate from the Board in regard to entry for National Film Awards is discriminatory, as the Ministry has permitted films to be entered in Film Festivals (non-commercial), without any certification. The Respondents referred to the Regulations governing the 9th Mumbai International Film Festival (for Documentary, short and animation films), popularly known as MIFF 2006. The said regulations provide that films shot and produced in India by an Indian national between 1.9.2003 and 31.8.2005 are eligible for entry in 'national competition'. Regulation 15 provides that censorship will not be applicable to any films entered in the festival. Thus, the policy of the Government is to give exemption from certification by the Board for entering films (both Indian and foreign) in Film Festivals which are non-commercial in nature and where viewership is confined to delegates and select audiences (subject to the condition that the Ministry will have the power to reject any film which in its opinion would impinge on the security and integrity of the country or affect law and order or affect relations with other countries). The respondents contend that when films can be entered in the national competition section of Film Festivals without the requirement of certification by the Board, requiring certification by the Board as a condition for entry for National Film Awards is ex facie discriminatory and arbitrary. It is submitted that a provision for rejection of any film, similar to Regulation 8 (extracted at Para 7 above) would be sufficient safeguard even for National Film Awards and there is no need for requiring a certificate from the Board. It is also pointed out that the Jury for National Film Awards consists of distinguished persons from the field of cinema and other allied areas and humanities, selected by the Directorate with the approval of the Government of India, and such a body of Jurists can be expected to act

A responsibly and weed out films which may offend the feelings and sensibility of any country or which promote racism, or otherwise unacceptable/objectionable.

B 17. The Government can no doubt make a policy permitting entry to all films including those which have not obtained certificates from the Board, for National Film Awards. But that is a matter to be decided by the Government. The question is not whether films should be permitted to be entered for National Film Awards, in an uncensored form. The question is whether the Government's policy restricting entry to only films certified by the Board is so unreasonable or manifestly arbitrary as to warrant interference in Judicial review. Nothing prevents the Government from having different policies for C National Film Awards and for Film Festivals.

D 18. The High Court wrongly proceeded on the assumption that the objects of the Film Festivals and National Film Awards are the same and therefore when permission was granted for entering films in Film Festivals without certification by the Board, a similar treatment should be extended to entries for the National Film Awards. The object of Film Festivals and the object of National Film Awards are different. Film Festivals are held, to provide a platform for film makers from all over the world to meet, exchange ideas, explore the possibility of co-production, market films and to broaden the vision of film makers. On the other hand, the object of National Film E Awards is to encourage the production of films of aesthetic and technical excellence and social relevance, which will contribute to the understanding and appreciation of cultures of different regions of the country and promote national integration and unity. When the purpose and object of Film Festivals and National Film Awards are completely different, the conditions that are F made applicable, or the exemptions that are granted, in respect of Film Festivals, cannot automatically be applied to National Film Awards. The two being unequal and dissimilar, the question of applying the same standards or norms does not arise. Nor can application of different norms to Film Festivals and National Film Awards, lead to a complaint of discrimination. Applying different yardsticks to different events, to achieve different objects cannot be considered G as discriminatory.

Re : Point (iii)

H 19. The next question is whether exemption in respect of films made by Film Institutes and films entered by Doordarshan entitles others also to claim a blanket exemption in respect of all films to be entered in National Film

Awards.

20. When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law. The principle has been stated by this Court in *Chandigarh Administration v. Jagjit Singh*, [1995] 1 SCC 745 thus :

“Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint

A of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the

B petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the

C Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-

D accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a similar action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles."

E In *Gursharan Singh v. New Delhi Municipal Committee*, [1996] 2 SCC 459, this Court observed :

F "There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State .. so far

G such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality

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before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuated an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in the process there has been a discrimination.”

21. In this case, we have already found that the NFA policy restricting the entry to only films certified by the Board is valid and does not violate Article 19(1)(a). It therefore follows that a film maker does not have any right to claim that he is entitled to enter his films without certification by the Board. When a film maker complains of discrimination on the ground that films made by Film Institutes and films entered by Doordarshan have been exempted from the requirement of certification, and claims similar exemption, the question that requires examination is whether the exemption that has been granted to Film Institutes and Doordarshan is legal. If it is illegal, he cannot claim a similar illegal exemption in his favour.

22. The appellants point out that only films produced by the Film Institutes running diploma/degree courses which are recognized by the Government of India and certified by the Head of such film institutes, as having been produced within the specified period, are exempted from certification by the Board. The appellants contend that when a film is made by a Film Institute running diploma/degree courses recognized by Government, the persons in-charge of the Film Institute would ensure due compliance with the principles and guidelines relating to certification of films under section 5B of the Act. Regulation 10(f) does not even require the Head of the film institute to certify that the film has been made by him or under his supervision or that the film complies with the principles and guidelines relating to certification under section 5B of the Act. Regulation 10(f) requires the Head of the Institute to only certify that the film has been produced within the eligibility period. There is no basis for the assumption that merely because a diploma or degree course of a film institute is recognized by the Government of India, any film made by such film institute would have complied with the principles for certification of films contained in section 5B of the Act.

23. Insofar as films entered by Doordarshan, the appellants rely on a

A notification dated 16.10.1984 issued by the Government of India in exercise of power of exemption under section 9 of the Cinematograph Act, 1952, exempting all Doordarshan programmes from the the provisions of the Act relating to certification of films, subject to the condition that while clearing programmes for telecast the Director General Doordarshan or the concerned Director, Doordarshan Kendra shall keep in view that the film certification guidelines issued by the Central Government to the Board of Film Certification under section 5B(2) of the said Act. What the said notification exempts are programmes telecast by Doordarshan (in respect of which the Director General, Doordarshan or the Director of the concerned Doordarshan Kendra are required to keep in view the principles and guidelines relating to film certification issued by the Central Government under section 5B). But we are not concerned with telecasting by Doordarshan. We are concerned with entry for National Film Awards certified by the Board between 1.1.2005 to 31.12.2005. The Notification dated 16.10.1984 does not grant any exemption in respect of entries made by Doordarshan for Film Awards. Therefore, the notification dated 16.10.1984 is not relevant. It is not necessary to examine the further question whether the Central Government can invest in the Director General and the Directors of Doordarshan Kendras the power and authority of the Central Board for Film Certification and thereby create virtually a parallel body.

24. If the notification dated 16.10.1984 is excluded, there are no special circumstances for exempting the films entered by Doordarshan. The exemption given under Regulation 10(g) is not for films made by Doordarshan, but films entered by Doordarshan. This means that any film made by any independent film maker when entered by Doordarshan becomes eligible without certification by the Board. It is also to be noted that Regulation 10(g) requires a certificate from the Director General, Doordarshan that the non-feature film has been produced within the eligibility period, but does not require a certificate from the Director General that the film entered has been viewed by him and it complies with the principles/guidelines relating to certification under section 5B. In the circumstances, we do not find any basis for a classification treating entries by Doordarshan as a special class requiring exemption.

25. There are innumerable Film Institutes and several Doordarshan Kendras. The exemptions in favour of films made by Film Institutes and films entered by Doordarshan will amount to recognizing the Heads of such Institutes or institutions as equal to Central Board for Film Certification and entrusting the Heads of such institutions with the power of Central Board for film

certification. Appellants have not placed any material justifying reposing of such confidence in persons other than the Central Board for Film Certification. Nor can such parallel authorities be recognized, having regard to the provisions of the Cinematograph Act. Further exemption under Regulations 10(f) and (g) cannot be equated to exemption under section 9 of the Act. We are, therefore, of the view that exemptions in favour of Film Institutes and entries made by Doordarshan were illegal and other film makers cannot claim similar exemption.

CONCLUSION

26. A film-maker can challenge an illegal exemption in favour of Film Institutes and Doordarshan under clauses (f) and (g) of Regulation 10, but cannot claim a similar exemption by placing reliance on such illegality. Therefore the challenge to the words "and certified by the Central Board of Film Certification" in Regulation 10(d) and (e) has no merit. The respondents have not challenged the validity of Regulation 10(f) and (g) granting exemption to films made by Film Institutes or films entered by Doordarshan. Therefore, no relief can be granted to respondents in that behalf.

27. In view of the foregoing, we allow the appeal in part and set aside the Judgment of the High Court except the direction to permit entry of non-feature films in digital format.

B.S.

Appeal Partly allowed. E