

A M/S. PRAKASH JHA PRODUCTION AND ANR.
v.
UNION OF INDIA AND ORS.
(Writ Petition (Civil) No. 345 of 2011)

B AUGUST 19, 2011
[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

C *Uttar Pradesh Cinemas (Regulation) Act, 1955: s.6(1) –*
D *Suspension of exhibition of the film – Certificate issued by*
E *Central Board of Film Certification for screening the Film*
F *'Aarakshan' – Order of suspension of exhibition of the film by*
G *the State of U.P. u/s.6(1) on the ground that the exhibition of*
H *the film if allowed would cause an adverse effect on the law*
and order situation in the State – Held: The power vested in
s.6 could be exercised by the State when a film which is being
publicly exhibited could cause a breach of peace – Such an
extra-ordinary power cannot be exercised with regard to a film
which is yet to be exhibited openly and publicly in a particular
State – The word 'suspension' envisages something
functional or something which is being shown or is running -
Therefore, the power as vested u/s.6 could not have been
exercised by the State of U.P. in view of the fact that the said
film was not being exhibited publicly in the theatre halls in U.P.
– Consequently, at the stage, when the film was not screened
or exhibited in the theatre halls publicly and for public
viewing, neither an opinion could be formed nor any decision
could be taken that there was a likelihood of breach of peace
by exercising power purported u/s.6 of the Act –The contention
that the film already is being exhibited in the State of U.P. as
a High Level committee has seen the film cannot be
accepted as the expression specifically uses the word 'publicly
exhibited' meaning thereby that it is being exhibited all over
and for public viewing in the State – Besides the contention

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of the State of U.P. that some of the scenes of the film could create a breach of peace or could have an adverse effect on the law and order situation cannot be accepted as this film was screened in all other States of India peacefully and smoothly and in fact some of the States, where this film was screened, were also similarly sensitive States as that of the State of U.P. – Aarakshan/ Reservation is also one of the social issues and in a vibrant democracy like Indian democracy, public discussions and debate on social issues are required and are necessary for smooth functioning of a healthy democracy – Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the instant case – The decision of the State Government suspending the screening of the film 'Aarakshan' in the State of U.P. is set aside.

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Union of India v. K.M. Shankarappa (2001) 1 SCC 582: 2000 (5) Suppl. SCR 117 - relied on.

S. Rangaranjan v. P. Jagjivan Ram & Ors. (1989) 2 SCC 574: 1989 (2) SCR 204 - referred to.

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Case Law reference:

1989 (2) SCR 204 referred to Para 19

2000 (5) Suppl. SCR 117 relied on Para 21

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CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 345 of 2011.

Under Article 32 of the Constitution of India.

Harish N. Salve, Amit Naik, Madhu Chaudhary, Mahesh Agarwal, Rishi Agarwal, E.C. Agrawala, Neeha Nagpal, Harshvardhan Jha for the Petitioners.

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A.S. Chandio, ASG, U.U. Lalit, Satish Chandra Mishra, Shail Kr. Dwivedi, AAG, R.K. Rathore, Ruchir Mishra, Sanjeev

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A Kumar Saxena, S.S. Rawat, D.S. Mahra, G.N. Reddy, C. Kannan, Kavita Wadia, Gunnam Venkateswara Rao, Manoj Kr. Dwivedi, Ashutosh Sharma, Abhinav Shrivastava for the Respondents.

The following order of the Court was delivered

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O R D E R

1. This writ petition is filed by the petitioners praying for the reliefs specifically set out in the prayer portion of the writ petition. One of the reliefs that is sought for in this writ petition is to strike down the provision of Section 6 (1) of the U.P. Cinemas (Regulation) Act (hereinafter referred to as "the Act") being allegedly ultra vires to the Constitution of India. The other relief that is sought for is to quash and set aside the decisions taken by the respondents, namely State of Punjab, State of Andhra Pradesh and State of Uttar Pradesh suspending the screening of the film 'Aarakshan' in their respective States for a specified period.

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2. Notice was issued on this writ petition making the same returnable today so as to enable the three State Governments to submit their reply/counter affidavit. However, at the stage of issuing notice itself, we were informed by the counsel appearing for the State of Punjab and Andhra Pradesh that so far as their States are concerned, they had withdrawn the order of suspension of screening of the film 'Aarakshan'.

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3. The counsel appearing for the State of Punjab and the State of Andhra Pradesh are present in the Court. Today also they stand by the same statement which they had made on the last date, meaning thereby, that they had lifted the orders of suspension of screening of the film in their respective States. Therefore, to our understanding, the aforesaid film is being screened in the aforesaid two States also as on this date. This petition, therefore, has been rendered infructuous so far as the States of Andhra Pradesh and Punjab are concerned.

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4. The State of Uttar Pradesh has filed the counter affidavit

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opposing the prayer in the writ petition which is on record. We have heard the learned counsel appearing for the parties extensively today. A

5. Mr. Harish Salve, learned senior counsel appearing for the petitioners has not pressed the prayer so far as constitutional validity of Section 6 of the Act is concerned. However, on his submission, we are keeping the said issue open to be agitated in an appropriate case in future, if necessary. He, however, has challenged the legality of the decision of the Uttar Pradesh Government suspending the screening of the film 'Aarakshan' in the entire State of Uttar Pradesh. According to him, the aforesaid exercise of power of suspension of the screening of the film amounts to exercising the power of pre-censorship which is being exercised by the Government, although no such power vested on it. According to him, the said power of censorship is vested in the Central Board of Film Certification, (hereinafter referred to as "the Board") and in the Central Government as provided for in the provisions made in The Cinematograph Act, 1952. He has also submitted that the power that is sought to be exercised in the present case under Section 6(1) of the Act is also without jurisdiction as such power could be exercised only when a film is being screened and shown in the public hall and also when a contingency of the nature as mentioned in the said Section arises. He submits that on satisfying the preconditions and only in such a situation a power is vested in the State Government to suspend the screening of the film for a specified period. He also submits that the aforesaid decision of the State Government is in violation of the provisions of Article 19(1) of the Constitution of India and, therefore, the same is required to be struck down and quashed. B
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6. We have also heard Mr. Chandio, learned Additional Solicitor General, who submits that after a certificate has been issued to a particular film by the Censor Board, the said film could be screened in the entire country and the order which is passed by the State Government is not envisaged as it H

A practically prohibits screening of the film in the entire State of Uttar Pradesh.

7: Mr. U.U. Lalit, learned senior counsel appearing for the State of Uttar Pradesh has, however, taken us through the contents of the counter-affidavit in support of his contention that the prayer in writ petition cannot be granted by this Court. He has submitted that a very high-level Committee has seen the film and thereafter has given an opinion, according to which if and when the concerned film is shown there is likelihood of breach of peace and also breach of law and order situation and, therefore, the aforesaid decision of suspending the screening of the film "Aarakshan" in Uttar Pradesh, which has been taken in order to preserve and upkeep the law and order situation in the State should be upheld.

8. In order to appreciate the aforesaid contentions of the counsel appearing for the parties, we have gone through the pleadings of the parties alongwith the documents relied upon as also the decisions which are referred to and relied upon.

9. We have also perused the provisions of Section 6 of the Act which is practically the foundation and basis of the present case. Section 6(1) of the Uttar Pradesh Cinemas (Regulation) Act, 1955 reads as follows:

"6. Power to the State Government or District Magistrate to suspend exhibition of films in certain cases - (1) The State Government, in respect of the whole of the State of Uttar Pradesh or any part thereof, and the District Magistrate in respect of the district within his jurisdiction may, if it or he, as the case may be, is of opinion that any film which is being publicly exhibited, is likely to cause a breach of the peace, by order, suspend the exhibition of the films and thereupon the films shall not during such suspension be exhibited in the State, part or the district concerned, notwithstanding the certificate granted under the Cinematograph Act, 1952."

10. Upon going through the records, we find that the film

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'Aarakshan' was submitted to the Central Board of Film Certification on 12.07.2011 for certification. Upon such submission of the film, the Chairperson of the Board, in terms of the provisions of the Act and the Rules, invited the legal expert and another expert who is related to dalit movement to watch the film at the time when the Examining Committee was previewing the film.

11. The Chairperson also saw to it that all the four members of the Examining Committee are members belonging to scheduled casts/scheduled tribes and OBC category. The said members of the Examining Committee along with the legal expert as also the expert related to dalit movement were present during the preview of the film. The experts as also the Examining Committee gave their approval for grant of censorship certificate and screening of the film. The Examining Committee decided to give U/A certificate to the film under the theme category "social". However, while taking the aforesaid decision, a view was expressed by the members of the Examining Committee for deletion of the word 'dalit' from the trailer in reel no. 1, which was deleted by the producer of the film, and the same was treated as voluntary cut. Thereafter, the certification was granted and a certificate was issued for screening of the film. The said certificate is annexed with the petition.

12. Pursuant to grant of the aforesaid certificate, the film is being screened all over India except for the State of Uttar Pradesh where it is not being exhibited because of the aforesaid decision of the State Government. The State of Uttar Pradesh has given certain reasons in their counter affidavit for the action taken leading to the issuance of the order suspending the screening of the film. They have also stated in their counter affidavit that the exhibition of the film 'Aarakshan' if allowed would definitely cause an adverse effect on the law and order situation in the State.

13. Our attention is also drawn by the counsel appearing for the State of U.P. to paragraph 3 of the said affidavit wherein

- A the relevant portion of the report given by the High Level committee constituted by the State Government is extracted. A bare perusal of the same would indicate that in the report the High Level Committee has suggested deletion of some portion from the film without which, according to them, the film cannot be screened as that may cause an adverse effect on the law and order situation in the State.

14. Before dealing with the said contentions, we would like to deal with the provision of the Act on the basis of which the aforesaid decision is taken. There is no dispute that the impugned decision is taken in the purported exercise of power under Section 6 of the Act. A bare perusal of the aforesaid provision in Section 6 of the Act would make it crystal-clear that the power vested therein could be exercised by the State under the said provision when a film which is being publicly exhibited could likely cause a breach of peace. Only in such circumstance and event, an order could be passed suspending the exhibition of the film.

15. The expression '*being publicly exhibited*' and the word '*suspension*' are relevant for our purpose and, therefore, we are giving emphasis on the aforesaid expression and the word. When it is said that a film is being publicly exhibited, it definitely pre-supposes a meaning that the film is being exhibited for public and in doing so if it is found to likely to cause breach of peace then in that event such a power could be exercised by the State Government. Such an extra-ordinary power cannot be exercised with regard to a film which is yet to be exhibited openly and publicly in a particular State. This view that we have taken is also fortified from the use of the word '*suspension*' in the said section. The word '*suspension*' envisages something functional or something which is being shown or is running. Suspension is always a temporary phase, which gets obliterated as and when the previous position is restored. Therefore, the power as vested under Section 6 of the Act could not have been exercised by the State of Uttar Pradesh in view of the fact that the said film was not being exhibited publicly in

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the theatre halls in U.P. Consequently, at this stage, when the film is not screened or exhibited in the theatre halls publicly and for public viewing, neither an opinion could be formed nor any decision could be taken that there is a likelihood of breach of peace by exercising power purported under Section 6 of the Act. A

16. The counsel appearing for the State has also submitted that in fact the film already is being exhibited in the State of Uttar Pradesh as a High Level committee has seen the film. We cannot accept the aforesaid position as the expression specifically uses the word 'publicly exhibited' meaning thereby that it is being exhibited all over and publicly for public viewing in the State. B C

17. Besides, the contention of the State of U.P. that some of the scenes of the film could create a breach of peace or could have an adverse effect on the law and order situation cannot be accepted as this film is being screened in all other States of India peacefully and smoothly and in fact some of the States, where this film is being screened, are also similarly sensitive States as that of the State of U.P. In such States the film is being screened without any obstruction or difficulty and without any disturbance of law and order situation. D E

18. So far the contention of the counsel appearing for the State of Uttar Pradesh that the issue of reservation is a delicate issue and is to be handled carefully is concerned, we are of the considered opinion that reservation is also one of the social issues and in a vibrant democracy like ours, public discussions and debate on social issues are required and are necessary for smooth functioning of a healthy democracy. Such discussions on social issues bring in awareness which is required for effective working of the democracy. In fact, when there is public discussion and there is some dissent on these issues, an informed and better decision could be taken which becomes a positive view and helps the society to grow. F G

19. We may, at this stage, appropriately refer to the H

A decisions of this Court in the case of *S. Rangaranjan Vs. P. Jagjivan Ram & Ors.* reported in (1989) 2 SCC 574. In paragraph 36 of the said judgment, this Court has stated thus:-

B "36. The democracy is a government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people's participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can
C neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value. What Walter Lippman said in another context is relevant here:

D When men act on the principle of intelligence, they go out to find the facts.... When they ignore it, they go inside themselves and find out what is there. They elaborate their prejudice instead of increasing their knowledge".

E 20. In paragraph 35, this Court has also stated that in a democracy it is not necessary that everyone should sing the same song. Freedom of expression is the rule and it is generally taken for granted.

F 21. Reference could also be made to the decision of this Court in *Union of India Vs. K.M. Shankarappa* reported in (2001) 1 SCC 582. In the said case constitutional validity of Sections 3, 4 and other Sections of the Cinematograph Act, 1958 were challenged. In paragraph 8 of the said judgment, this Court has stated that once an expert body has considered the impact of the film on the public and has cleared the film, it
G is no excuse to say that there may be a law and order situation and that it is for the State Government concerned to see that the law and order situation is maintained and that in any democratic society there are bound to be divergent views.

H 22. In the present case, the Examining Committee of the

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Board had seen the film along with the experts and only after all the members of the Committee as also the two experts gave positive views on the screening of the film, thereafter only the certificate was granted. Therefore, since the expert body has already found that the aforesaid film could be screened all over the country, we find the opinion of the High Level committee for deletion of some of the scenes/words from the film amounted to exercising power of pre-censorship, which power is not available either to any high-level expert committee of the State or to the State Government. It appears that the State Government through the High Level Committee sought to sit over and override the decision of the Board by proposing deletion of some portion of the film, which power is not vested at all with the State.

23. It is for the State to maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially. Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the present case. As held in *K.M Sankarapaa* (Supra) it is the responsibility of the State Government to maintain law and order.

24. Considering the entire facts and circumstances of the case, we are of the considered opinion that the present writ petition is required to be partly allowed in terms of the observations made herein.

25. We, therefore, set aside and quash the decision of the State Government suspending the screening of the film 'Aarakshan' in the State of Uttar Pradesh in the light of the observations made and we partly allow the petition to the aforesaid extent.

D.G.

Writ petition partly allowed.