**Anand Patwardhan Vs. The Central Board of Film Certification and Ors.**

**Summary and Outcome**

The High court of Bombay held that the film makers should be given a free hand and any forceful deletion or addition will be in violation to its fundamental rights. Mr. Anand (‘**Petitioner**’) approached the high court against the decision passed by the Film certification appellate tribunal (‘**FCAT**’) recommending 2 cuts and one addition. The court ruled that the films should not be watched from the eyes of the weak man. Rather, from a reasonable and a strong man. Further, the scenes should not be examined in isolation instead as a whole.

**Facts**

Mr Anand was a well-known documentary director in India. He has directed international as well as award-winning national documentaries such as Bombay Our City,1985, Religious fundamentalism and many more. The current case revolves around the order passed by theFCAT, The FCAT ordain two cuts and one additional cut for the documentary called “War and Peace” (Jang Aur Aman). The documentary shows the impact of war and its aftermath. The documentary was screened at many national/ international events and has received many awards such as the best film award at the 7th Mumbai international film award, Also International Jury award.

For acquiring the certification for public exhibition, Mr Anand submitted the documentary to the central board of film certification ( ‘**The Board**’) as per the rule 21 of the cinematograph certification act rules ( ‘**Rule’**). The examining committee after viewing the documentary recommended six cuts for issuing the certificate. However, Mr Anand objected the committee decision and made a representation against order. Therefore, the examining committee decided to review the documentary again. However, the second committee, instead of decreasing the number of cuts recommended by the first committee ordered 15 additional cuts. As a result of the committee decision, Mr Anand decided to file an appeal at FCAT under section 5-C of the act. Finally, after reviewing the documentary FCAT ordered two cuts with one addition. The first cut was ordered for the scene in which the agitator is shouting that “Hindu Bomb hi hi (Hindu Bomb shame shame) and Muslim Bomb hi hi ( Muslim Bomb shame shame). The next cut was from the speech of a Dalit leader Shri Sangare. He targets the other god by saying that Buddha was a peace lover whereas, “why didn’t you do your blast on Rama’s birthday? It’s your culture. All your gods are fully armed”, and then he says that all Hindu gods carry the weapon. Lastly, The addition was for the scene in which reference to the Tehelka Tapes is given. The FCAT directed Mr Anand to mention that the tapes are under the scrutiny of a judicial commission”. Therefore, aggrieved by the decision, Mr Anand filed the present petition.

**Decision Overview**

Justice Gokhale, while delivering the court’s opinion, examined whether the order passed by FCAT violates freedom of speech and expression guaranteed by Article 19(1)(a) of the Indian constitution or not?.

 Mr Sebastain appearing on behalf of Mr Anand pleaded before the court that the FCAT decision is uncalled. He briefly presented the reasons as to why the cuts are uncalled. Regarding the first cut, he pleaded that it is the agitators in the film expressing their views in calling the attacks as a Hindu bomb or Muslim bomb. Rather, the petitioner, through his documentary, wanted to pass on the message as to how the general public perceives these attacks. Whereas, FCAT, while recommending this cut stated that “ India is a secular country. By calling It a Muslim bomb, it is being projected as if it belongs to all the Muslim countries in the word”.[Para.11]. However, Mr Sebastain submits, that it is an erroneous interpretation done by the FCAT and no reasonable viewer will interpret in that way. Concerning the second cut, the petitioner wanted to bring out the thought of the Dalit leader, who was anguished by the blast on Buddha birthday. He is in no way belittle any religion by stating “It is your culture”. Rather, he is just expressing his emotion. To which he is entitled too. Lastly, Mr Sebastain argued that the addition is a way of “imposing government’s view in the documentary”[Para.13]. He stated that the commission examining the tapes had already passed an interim order upholding the validity of the tapes. Therefore, Any forced violation will curtail the fundamental rights of the petitioner.

On the Other hand, Mr Salvi appearing on behalf of the respondent(s), Justified the cuts by stating that “ in the interest of maintenance of public order”[Para.12]. Further, he said that comments such as “ Hindu bomb/Muslim Bomb” is not permissible as per section 5-B of the act, which is in pari materiato the restrictionto the restriction given under article 19(2) of the Indian constitution (Restriction to freedom of speech and expression). Furthermore, Mr Salvi justified the addition on the grounds of decency.

The court decided to examine the provision of the Indian constitution and the cinematograph act, 1952. Article 19(1)(a) grants all citizen free speech and expression. However, this is subject to reasonable restriction laid down in article 19(2). The cinematograph act has a similar provision that is section 5-B which lays down the grounds on which the certification for the public exhibition can be rejected.

The court divided the judgement into two parts. 1.) why the addition is not required. 2.) Why the deletion would amount to a violation of free speech. With regards to the first part, The court reiterated the principle laid down in K.A. Abbas v. Union of India, MANU/SC/0053/1970 : [1971]2SCR446 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 foibles along with what is good [Para 49]”. The court stated that the scene could not be taken in isolation. Instead, the entire theme has to be examined. Specific locations from the red light shown in the concerned documentary were not held to be affecting decency or morality [Para 21]. Similarly, it is up to the petitioner what he wants to show and as FCAT has no objection to the tapes but wants an addition. Therefore, as quoted in the Abbas judgement that “ it is for the person watching to draw their inference”[Para 21].

With regards to the second part, The court noted that in the case of  Ramesh v. Union of India reported in MANU/SC/0404/1988 that “even contemporary news bulletin very often carry scenes of pitched battle or violence. Further, modern developments, both in the field of cinema as well as in the field of national and international politics, have rendered it inevitable for people to face the realities of internecine conflicts, inter alia, in the name of religion”[Para 22]. Furthermore, the court pointed out that the slogan “shame shame” be seen as affecting public order. Also, without the scene, we will never get to know how to general public sees it and as mentioned above, a thing cannot be seen in isolation. Therefore, if we examine the scene entirely, it will be wrong to say that it will give birth to communal tension.

Lastly, with respect to the Sangare speech. The court pointed out that the state what good this freedom is if it continually has to live in fear of public reaction. Further, In S. Rangarajan v. P. Jagjivan Ram reported in MANU/SC/0475/1989 : [1989]2SCR204 “ *in democracy it is not necessary that everyone should sing the same song and again, open criticism of government policies and operations is not a ground for restricting expression*”[Para 26].

 Therefore, As, the petition in the current scenario, is trying to present the reaction of bomb blasts/wars/weapons at the very outset, he just wanted to present the aftermath impact on the minds of general public. Therefore, these senses are incorporated. Further, it his right to decide what/what not to include. Hence, the court held that any deletion or addition would violate the right of the petitioner. Therefore, the court set aside the decision passed by the FCAT.

**Decision Direction**

This case neither expands, contracts nor has a mixed outcome. Rather, it has just reiterated what has been previously held by the Indian Court with respect to freedom of speech and expression.

**Global Perspective**

**Table of Authorities**

**National standards, law or jurisprudence**

* India, Const. art. 226
* India, Const. art. 19(1)(a)
* India, Const. art. 19(2)
* Cinematograph Act, 1952 section 5-A(1)
* Cinematograph Act, 1952 section 5-B
* Cinematograph Act, 1952 section 5-D
* K.A. Abbas v. Union of India, MANU/SC/0053/1970 : [1971]2SCR446
* Ramesh v. Union of India reported in MANU/SC/0404/1988 : [1988]2SCR1011
* S. Rangarajan v. P. Jagjivan Ram reported in MANU/SC/0475/1989 : [1989]2SCR204
* Anand C. Dighe v. State of Maharashtra reported in2002 (1) BCR 57