

MANU/MH/0242/2003

Equivalent Citation: 2003(3)ALLMR25, 2003(5)BomCR58, 2004(1)MhLj856

## IN THE HIGH COURT OF BOMBAY

Writ Petition No. 229 of 2003

Decided On: 24.04.2003

Appellants: **Anand Patwardhan**  
**Vs.**

Respondent: **The Central Board of Film Certification and Ors.**

### Hon'ble Judges/Coram:

*H.L. Gokhale and Ranjana Prakash Desai, JJ.*

### Case Note:

**Constitution - public order - Articles 14, 19 (1) (a) and 21 of Constitution of India - petition filed challenging Order of two cuts and one addition in documentary film made by petitioner - petitioner contended Order as violative of Article 19 (1) (a) - cuts directed on ground that scenes will affect public order - after consideration of scenes Court found they did not affect public order in any way - cuts recommended merely to harass petitioner - regarding addition Court observed that it must be decided by petitioner whether he wants to add some scene or not - held, cuts and addition as recommended under Order affect freedom of speech and expression of petitioner under Article 19 (1) (a) and so set aside.**

## JUDGMENT

### H.L. Gokhale, J.

1. This writ petition under Article 226 of the Constitution of India seeks to involve Article 14, 19(1)(a) and 21 of the Constitution to challenge the order dated 9/12th December 2002 passed by the Film Certification Appellate tribunal ("FCAT" for short) under Section 5-D of the Cinematograph Act, 1952 ("the Act" for short). The impugned order directs two cuts and one addition in the documentary film made by the Petitioner. The petition is opposed through an affidavit in reply of the Assistant Regional Officer affirmed on 27th February, 2003.

2. The facts leading to this petition are as follows:-

The Petitioner is a well known figure in the field of documentaries in India and has been making socially relevant documentaries for last nearly three decades. In the past, he has made films which have won national and international awards, wherein he has dealt with various subjects like those regarding street dwellers (Bombay Our City, 1985), religious fundamentalism ("Ram Ke Nam" - i.e. in the name of God, 1992), the connection between machismo and sectarian violence (Father, Son and Holy War, 1995) and the plight of those displaced in the name of development (A Narmada Diary,

1995).

**3.** The subject of the present petition is a documentary called "War and Peace" (Jang Aur Aman). It deals with the journey of peace activism in the face of global militarism and war, and has been filmed over a period of 3 years in different countries such as India, Pakistan, Japan and U.S.A. It is stated in the petition that the film was screened at the 7th Mumbai International Film Festival in February, 2002 and was awarded the best Film/Video Award as well as the International Jury Award. It is material to note that the festival was organised by the Films Division of India which comes under the Ministry of Information and Broadcasting. It is also stated that the film won the Grand Prize at the Earth Vision International Film Festival in Tokyo in 2002 and also won the International Critics Award at the Sydney International Film Festival in 2002. It is also claimed that it won the Gold Award of the Indian Documentary Producers' Association in 2003.

**4.** The Petitioner submitted this film as required by the law to the Central Board of Film Certification (hereinafter referred to as "the Board") for obtaining the necessary certificate for its public exhibition. This Board is joined as Respondent No. 1 and Union of India is Respondent No. 2 to this petition. After the film was so submitted under Rule 21 of the Cinematograph Certification Rules, 1983 ("the Rules" for short), it was initially viewed by an Examining Committee. The Committee recommended 6 cuts for issuing the "U" Certificate. The Petitioner made a representation against this decision and the Board appointed a Revising Committee. As per the affidavit in reply, the Revising Committee recommended refusal of the certificate by four versus three and in view of this thin majority, the film was referred to a second Revising Committee. This Committee was also divided in its opinion and the Chairman of the Board accepted the majority opinion which recommended 15 more cuts. Being aggrieved by this decision, the Petitioner preferred an appeal to the FCAT under Section 5-C of the Act. The FCAT viewed the film and ultimately by the impugned order directed issuance of "U" Certificate, subject to the Petitioner carrying out two cuts and one addition as per the impugned order.

**5.** This Tribunal (FCAT) is supposed to consist of a Chairman and not more than 4 members appointed by the Central Government under Section 5-D(3) of the Act. In the instant case, it consisted of Chairman and 3 other members. The aforesaid decision was of the Chairman and two members whereas one member recommended one additional cut in her separate order. Since the majority members directed two cuts and one addition, the Petitioner has taken their order as the order of the Board. That this majority order is the final order is accepted by the Respondents also by stating so at the end of para 4 of the affidavit on behalf of the Respondents. Being aggrieved by this judgment and order, the present petition has been filed.

**6.** As stated above, FCAT directed two deletions and one addition. The first deletion is with respect to a demonstration which is being held at Hutatma Chowk, Mumbai. The demonstrators are giving slogans "Hindu Bomb Hi Hi (Hindu Bomb Shame Shame) and Muslim Bomb Hi Hi (Muslim Bomb Shame Shame)". The FCAT has directed that the slogans be deleted. The second deletion is from a speech of a Dalit Leader Bhai Sangare. This Shri Sangare is seen giving a speech after explosion of the atomic device by India. The speech records anguish of the speaker on the device being exploded on the day of Buddha Jayanti. The speaker says that Buddha gave message of love and that being so, why the bomb exploded on his birthday. And then the speaker says "Why didn't you do your blasts on Rama's birthday? It's your culture. All your gods are fully armed. Rama has an arrow, Shankar has a trident,

Vishnu has a chopper. All have weapons. So when it's the birthday of armed ones, do your bomb blast. Our Buddha is unarmed." This second deletion directs the deletion of the sentence "It is your culture." Then FCAT has directed an addition where there is a reference to the Tehelka Tapes. The FCAT order states "And lastly the so called Tehelka Tapes. Let Mr. Patwardhan show the tapes but let him mention in the commentary and display at an appropriate place that the tapes are under scrutiny of a Judicial Commission."

**7.** Since we were concerned with the above referred two deletions and one addition, it was thought desirable that the documentary be seen. Accordingly, a special screening thereof was arranged on 7th March 2003 for the benefit of this Bench. The documentary begins with the camera on the death procession of Mahatma Gandhi. The voice of the maker of the film is then heard who says as follows:

"Gandhiji was assassinated two years before I was born. The grief of this moment never really went away, unconsciously transmitted through the love of parents and family. The child in me never stopped asking: "who could have done this?"

That our family, like Nathuram Godse and his co-assassins, were "upper caste" Hindus, cured me forever of any narrow understanding of nation - and any vestige of pride, in the accident of birth.....'

**8.** Thereafter the maker of the film speaks about his uncles Rausaheb Patwardhan and Achutrao Patwardhan. Then he mentions the military debacle against China in 1962, and thereafter the film goes over to various scenes of victims of the nuclear bomb blasts in the hospitals and then to various aspects connected with war, nuclear weapons and sufferings therefrom. The film maker mentions that this family participated in the non-violent Gandhian Movement and as to how subsequently there has been a rise of militarism in Indian sub-continent leading to appropriate resistance by peace movement in India and world over. The film deals with the question of costs extracted from the citizens in the name of national security, the plight of the people living near the nuclear test sites, the effect of uranium mining on the indigenous population, as to how enemies are invented and how economies are inextricably tied to the production and sale of weapons. While dealing with various resistance movement, the aforesaid demonstration at Hutatma Chowk, Mumbai has been shown. Similarly while giving the reactions of various people, the speech of Bhai Sangare has been shown and, while pointing out as to how the race for the weapons leads to corruption, the extracts from the Tehelka Tapes shown by a news channel are reproduced in this film.

**9.** Then there is a reference to the peaceful opposition from the people of Pokhran where the nuclear device was tested. There are voices of suffering of the people staying nearby the sites of uranium mining. Then there is a visit of the protagonist to Pakistan and the reactions of the people in Pakistan to Pakistan's bomb, positive as well as negative. There are various shots of Pakistani children and their reactions and also those of Pakistani artists supporting the cause of peace. Thereafter there is a coverage of the family of a member of Indian Armed Forces who died during the Kargil War and yet as to how his parents are espousing the cause of peace. There are interviews of American scientists and historians, Indian activities, reactions of various Indian political and social leaders and then there is a visit to Japan and coverage of the peace movement in Japan. There are various shots as to now Japanese float lanterns in the memory of the people lost and dead during the bombing. Finally, the

film has an epilogue containing amongst others the attack on World Trade Centre in U.S.A. and sufferings of the Afghanistan children. The film ends with a photograph of Gandhiji kissing a child and with a message as follows:-

"One thing is certain. If the mad race for armaments continues it is bound to result in a slaughter such as has never occurred in history. If there is a victor left, the very victory will be a living death for the nation that emerges victorious. There is no escape from the impending doom save through a bold and unconditional acceptance of the non-violent method with all its glorious implications."

**10.** Thus the film makes a powerful plea for peace and shows the damaging effects of war and nuclear weapons. Aside from various visuals and interviews, it makes an artistic use of songs, dances and music which have their own impact. The maker of the film made available to the court the complete script with sub-titles and its text also. This has helped us to reproduce some of the salient features of the film as mentioned above.

**11.** Now coming to the two deletions and one addition, Mr. Sebastian, learned counsel appearing for the Petitioner, submitted that both the two deletions and one addition were totally uncalled for and affect the freedom of speech and expression of the Petitioner in an unjustified manner and are impermissible under the Indian Constitution. As far as the first deletion is concerned, what is shown is a demonstration by some peace activists at Hutatma Chowk, Mumbai where they decry the Indian bomb as well as the one made by Pakistan. The demonstrators are not praising either of the two bombs, but they are saying shame to the Hindu bomb and shame to the Muslim bomb. Mr. Sebastian submitted that this is an expression of the demonstrators and not of the Petitioner. The maker of the film is not calling the bomb of India as a Hindu bomb or the one of Pakistan as Muslim bomb. It is the demonstrators who are calling the bombs as such. He submitted that the idea is to show to how these bombs are perceived by the people at large including some of the activities for peace. While recommending this deletion, the FCAT has commented in its order as follows:-

"Why give it or allow it to be given a religious colouring? Why communalise it? India is a secular country and why the Indian bomb is to be called a Hindu bomb and similarly why the Pakistan bomb is to be called a Muslim bomb. It is not a bomb of the Muslims. It is a bomb of the Pakistani. By calling it a Muslim bomb, it is being projected as if it belongs to all the Muslim countries in the world."

Mr. Sebastian submitted that this was not what was sought to be conveyed and the entire reasoning was erroneous. In his submission, no reasonable viewer will draw any such interference. In any case, what the documentary was showing was a demonstration by some others who were deploring both the bombs and the role of the film maker was only to show as to what was the state of affairs.

**12.** Similarly with respect to the speech of Bhai Sangare, the only sentence objected is "It is your culture." The FCAT has commented on this sentence by saying that it hurts not the Hindus alone but all those who are proud of, adhere to and believe in the culture represented by Rama, Shankar and Vishnu. On this aspect also, the reaction of Mr. Sebastian is that it is the speech of a Dalit leader who is unhappy of the device being exploded on Buddha Jayanti. Mr. Sebastian submitted that the Hindu

Gods have weapons in their hands to avoid injustice and Bhai Sangare's speech was not to belittle them. But, in any case, what Bhai Sangare wanted to convey was clear that whereas Hindu Gods have weapons in their hands, Gautam Buddha did not have any, and therefore the bomb should not have been exploded on his birthday. The comment of Mr. Sebastian is that this is a reaction of a Dalit leader who was a follower of Gautam Buddha and he is entitled to this comment. This is not with a view to belittle any religion as such. As far as both these cuts are concerned, Mr. Salvi, learned counsel appearing for the Respondents, on the other hand, tried to justify them on the ground of the same being in the interest of maintenance of public order. He submitted that the description of the bomb as Hindu bomb or Muslim bomb or the comment on the Hindu Gods will disrupt public order. In his submission, this is not something which is permissible even under Sub-section (1) of Section 5-B of the Act which lays down the principles for guidance in certifying the films.

**13.** As far as the addition is concerned, Mr. Sebastian submitted that this was an attempt to place the government's view point into the documentary, and the Petitioner was not ready for that. The Petitioner has stated in the petition in this behalf that Justice Venkataswami Commission, which was then looking into the controversy arising out of these tapes, had passed an interim order upholding the authenticity of these tapes. It is subsequently pleaded in para 9 of the petition that "Any forced addition violates the artistic freedom of the film maker to film and edit his material and to decide what goes well with the film as a whole and what conveys the message most truthfully and effectively". Mr. Salvi, on the other hand, submitted that the addition was necessary and desirable from the point of view of decency as stated in Section 5-A(1) of the Act and further that no prejudice would be caused to the Petitioner if any such addition is introduced.

**14.** In order to decide the question raised in the petition, it is necessary to refer to some of the provisions of the Constitution and the Cinematograph Act, 1952. Article 19(1)(a) of the Constitution grants all citizens of India the right to freedom of speech and expression. This right is however subject to the provision made in Sub-article 19(2). Article 19(2) reads as follows:-

**"19. Protection of certain rights regarding freedom of speech, etc.**

(1) .....

(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Cinematograph Act, 1952 has a similar provision in Section 5-B(1). This Section 5-B(1) reads as follows:-

**"5-B. Principles for guidance in certifying films.** - (1) 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 interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence."

It is also material to note that Sub-section (2) of Section 5-B gives a power to the Central Government to issue such direction as it may think fit and set out the principles to guide the authority competent to grant certificates under the said Act while sanctioning the films for public exhibition. These guidelines are however subject to the provisions contained in Sub-section (1) as Sub-section (2) itself directs.

**15.** This right of the film makers has come up for consideration in various judgments from time to time. One of the earliest judgments in this behalf is that of a Constitution Bench of the Apex Court (Per Hidayatullah, CJ.) in **K.A. Abbas v. Union of India, MANU/SC/0053/1970 : [1971]2SCR446** .That was a matter wherein the Petitioner therein had made a documentary entitled "A Tale of Four Cities" that documentary amongst others had a scene on the red-light district in city of Bombay and the Board of Film Censors had directed a cut regarding some of those scenes. This decision was challenged in the petition filed to the Apex Court. It is material to note that during the course of the hearing before the Apex Court, the Attorney General stated that the government had decided to grant "U" Certificate to the film without the cuts previously ordered. Yet the Apex Court examined the question and made certain observations on the question involved. It is also material to note that the film purported to contrast the luxurious life of the rich in the four cities with the squalor and poverty of the poor. As far as the matter in hand is concerned, it is interesting to note what the Apex Court has recorded in para 3 of that judgment.

"In one scene a fat and prosperous customer is shown riding a rickshaw which a decrepit man pulls, sweating and panting hard. In a contrasting scene the same rickshaw puller is shown sitting in the rickshaw, pulled by his former customer. This scene is the optimization of the theme of the film and on view are the statues of the leaders of Indian Freedom Movement looking impotently from their high pedestals in front of palatial buildings, on the poverty of the masses."

It is relevant to note that though the aforesaid scene in the documentary had a subtle comment while showing the statues of the leaders of Indian Freedom Movement, the Films Censor Board had not thought it necessary to direct any deletions.

**16.** For our purpose, what the court has observed in para 49 and 50 of the aforesaid judgment is relevant and those observations are:-

"49. ....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. We must not look upon such human relationships as banned in toto and for ever from human thought and must give scope for talent to put them before society....."

"50. ....Therefore it is not the element of rape, leprosy, sexual immorality which should attract the censor's scissors but how the theme is handled by the producer....." (Underlining supplied)

**17.** the next judgment relied upon by the Petitioner is in the case of **Ramesh v. Union of India reported in MANU/SC/0404/1988 : [1988]2SCR1011** .That was a decision concerning a TV Serial by name "Tamas", which was on the backdrop of the communal tension before the partition of India. The question before the court was with respect to "U" Certificate granted by the Central Board of Film Censors. A

dispute was raised with respect to certain scenes in the film and the effect thereof on common men. In para 13 of the judgment, the Apex Court referred to the judgment of Vivian Bose J. (as he then was in the Nagpur High Court) in the case of Bhagwati Charan Shukla v. Provincial Government reported in MANU/NA/0057/1946. The court quoted with approval the observation of the learned Judge that "the effect of the words must 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." The observation of the Apex Court in para 21 of the judgment to the following effect is quite apt about our matter also.

"..... If some scenes of violence, some nuances of expression or some events in the film can stir up certain feelings in the spectator, an equally strong, lasting and beneficial impression can be conveyed by scenes revealing the machinations of selfish interests, scenes depicting mutual respect and tolerance, scenes showing comradeship, help and kindness which transcend the barriers of religion. Unfortunately, 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. Even contemporary news bulletins very often carry scenes of pitched battle or violence. What is necessary sometimes is to penetrate behind the scenes and analyse the causes of such conflicts....."

**18.** The next judgment to be noted is in the case of **S. Rangarajan v. P. Jagjivan Ram reported in MANU/SC/0475/1989 : [1989]2SCR204** .It was a case wherein the producer of a Tamil film by name "Ore Oru Gramathile" (In One Village) had filed an appeal against the judgment of Madras High Court, which had revoked the "U" Certificate granted to the film. The film was regarding the caste conflict. It depicts as to how a girl of a higher caste in certain circumstances takes the advantage of the reservation meant for a backward class, yet works for the benefit of the society and the situation arising therefrom. The Apex Court allowed the appeal and directed "U" Certificate to be issued. In para 35 of the judgment, the Apex Court observed that "the reasoning of the High Court runs afoul of the democratic principles to which we have pledged ourselves in the Constitution. In democracy it is not necessary that everyone should sing the same song." The court observed in para 53 as follows:-

"Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."  
(All underlining supplied)

**19.** Then we have the judgment in the case of **Bobby Art International v. Om Pal Singh Hoon reported in MANU/SC/0466/1996 : AIR1996SC1846** ,wherein the question was with respect to objection on the basis of decency or morality to certain scenes in the film by name "Bandit Queen". The film was on the life of an erstwhile dacoit one Phoolan Devi and the objection was to some of the scenes involving rape and abusive language. The court allowed the appeal of the producer.

In para 17, it quoted with approval the earlier quoted observations from para 49 from the case of K.A. Abbas (supra). In para 22 the court observed that "The film must be judged in its entirety from the point of view of its overall impact." (Underlining supplied)

**20.** The Petitioner has lastly relied upon a recent judgment of a Full Bench of this Court in **Anand C. Dighe v. State of Maharashtra reported in 2002 (1) BCR 57**. That was a matter concerning a play in Marathi by name "Mee Nathuram Godse Bolton" (I am Nathuram Godse Speaking) which sought to explain the actions of Nathuram Godse who murdered Mahatma Gandhi. The Government of Maharashtra in exercise of its powers under Section 95(1) of Code of Civil Procedure, 1973 had declared that every copy of that play and its translation in Gujarati or any other language shall stand forfeited to the Government. Section 95(1) of the Code deals with the powers to the State Government declaring certain publications forfeited and to issue search warrants if the circumstances therein are satisfied. The section provides that where any newspaper or a book or any document wherever printed appears to the State Government to contain any matter, the publication of which is punishable under Section 124-A or Section 153-A or Section 153-B or Section 292 or Section 293 or Section 295-A of the Indian Penal Code, the State Government may issue the necessary notification of forfeiture. Section 153-A deals with promotion of enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony. Section 295-A deals with deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religious beliefs. The Full Bench accepted the challenge to the forfeiture. In para 19, the Full Bench observed as follows:-

"The Government in the present case seems to have acted in the wake of the criticism voiced against the play and of the sense of outrage of those who believe that the play unfairly criticizes the Father of the Nation. The Father of the Nation holds a position which is sui generis in the nation. The nation owes its freedom to his relentless struggle for independence from a foreign power. His message of peace and non-violence should provide a beacon to these troubled times. But, it is important to realise that there are eternal values on which the Constitution of a democracy is founded. Tolerance of a diversity of view points and the acceptance of the freedom to express of those whose thinking may not accord with the mainstream are cardinal values which lie at the very foundation of a democratic form of Government. A society wedded to the Rule of law, cannot trample upon the rights of those who assert views which may be regarded as unpopular or contrary to the views shared by a majority. The law does not have to accept the views which have been expressed by the petitioner in the play in order to respect, the rights of the petitioner as a playwright to express those views. Respect for and the tolerance of a diversity of viewpoints is what ultimately sustains a democratic society and Government. The right of the playwright, of the artist, writer and of the poet will be reduced to husk if the freedom to portray a message whether it be in canvas, prose or verse is to depend upon the popular perception of the acceptability of that message. Popular perceptions, however strong cannot override values which the constitution embodies as guarantees of freedom in what was always intended to be a free society."

**21.** From what is stated above, it is clear that the freedom of speech and expression guaranteed under Article 19(1)(a) has come to be scrupulously protected by the courts room time to time. As held in para 34 in the case of K.A. Abbas (supra),



freedom of speech and expression admits of extremely narrow restraints. The judgment says in para 49, "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." What is to be seen is as to how the entire theme is handled by the producer. Showing of certain scenes from the red light area shown in the concerned documentary was not held to be affecting decency or morality. Statutes of leaders of Indian Freedom Movement looking impotently from their high pedestals in front of palatial buildings, on the poverty of the masses was not even objected by the censors. On this background, we come to the portions objected in the present documentary. Here the Petitioner is trying to canvass the cause of peace, and in that context points out as to how a war unnecessarily leads to an unjustified production of arms and weapons and at times this is utilised by the politicians towards corrupt purposes. This is sought to be pointed out by referring to the Tehelka Tapes, wherein a leaders of Samata Party (to which the Defence Minister belongs) is seen meeting a fake arms dealer and a leader of ruling Bhartiya Janata Party is seen receiving certain amount similarly from a fake arms dealer. This is followed by Newspaper Clippings of Bofors Scam and a commentary that the earlier ruling Congress Party was voted out of power following a scandal involving the Swedish Bofors Gun. The counsel for the Respondents sought to criticise this depiction on the ground of decency and a note was sought to be added that the tapes are under a judicial scrutiny. In our view, it is for the Petitioner to decide what he must depict in the context of the subject. On the other hand, it is submitted by the Petitioner that in its interim rulings the Venkataswami Commission has upheld the validity of tapes. Mr. Sebastian has rightly commented that this is a partial updating and the documentary is complete without any such addition. The FCAT has no objection to the tapes being shown. It however wants an addition that the tapes are under judicial scrutiny. As observed by Vivian Bose J. in the earlier quoted judgment, it is for the persons watching to draw their inference. In our view, the addition was therefore not called for at all.

**22.** Then we turn to the two deletions, namely one on Hindu bomb and Muslim bomb and the other on speech of a Dalit leader where the states that using weapons is "culture" of Hindus" and indicates that it is not so with the Buddhist. In *Ramesh v. Union of India* (supra), there were large number of scenes depicting the communal tension and riots before the partition of India. That was not held as prompting any communal disharmony leaving it to the strong minded persons to draw their inferences. Besides, the entire message of that serial "Tamas" was taken into consideration. In the instant case, even the persons giving slogans as seen from the documentary are decrying the bombs made by India and Pakistan. It is their perception, which is shown in the documentary, when they describe the bombs as Hindu bomb and Muslim bomb. The Petitioner is not calling them as Hindu bomb or Muslim bomb. There is therefore no necessity to delete the particular scene on the ground that it would affect the public order. If the scenes of riots in the television series (which are such at the residences of various people), could not affect the public order, there is no reason for anybody to imagine that any such slogans would affect the public order. It is material to note that in para 21 of its judgment on "Tamas" serial, the Apex Court has noted that even contemporary news bulletin very often carry scenes of pitched battle or violence. The court has also noted that 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. Any such expression or event in the documentary cannot be truncated and looked at separately as affecting the public order.

**23.** In para 48 of S. Rangarajan's case (supra), the Apex Court referred to a judgment of the Federal Court in Niharendu Dutt Majumdar v. Emperor, AIR 1942 FC 22. The question involved was with respect to the vulgar and abusive outburst against the government by the accused. While acquitting the person from the charges under the Defence of India Rules, the Federal Court observed as follows:-

"The speech now before us is full of them... But we cannot regard the speech, taken as a whole as inciting those who heard it, even though they cried "shame shame" at intervals, to attempt by violence or by public disorder to subvert the government for the time being established by law in Bengal or elsewhere in India.

Thus slogans "shame, shame" by themselves cannot be said to create a situation affecting public order though the FCAT has tried to contend that Indian bomb is not a Hindu bomb nor the Pakistani bomb that of Muslims world over. There is no need to have any quarrel with this proposition. However, that is one view point. In fact, to buttress the same, one must know as to whether there is another perception and if so what is it. If the scene is deleted, people will not know as to what is the perception of the bombs in one section of the society. Mr. Sebastian in fact submitted that even the demonstrators in the scene are disapproving such perception. In any case, we are concerned with the question as to whether such an expression by itself will affect public order. As indicated in the above authority, the whole speech or the scene is to be considered. In our view, it is erroneous to say that this depiction, when it is seen in its entirety, will lead to communal tension or public disorder and we reject this submission.

**24.** Similarly, in respect of the second out, namely one from speech of Bhai Sangare, only one sentence, namely "This is your culture", is recommended for deletion. We have seen the scene and read full speech of Bhai Sangare. He is unhappy at the bombs being exploded on Buddha Jayanti and he states that Buddha stood for peace and he did not use any weapon. As against that, Hindu Gods have weapons in their hands. It is in this context that he has commented that "This is your culture." Bhai Sangare is entitled to his expression. Again, the question is whether one sentence can be read separately and can be criticised as affecting public order? What is to be noted is that the entire speech is made to oppose the manufacture of the bomb. It is also critical of the device being exploded on Buddha Jayanti. It is with a view to point out the contrast between Buddha and Hindu Gods that the speaker has referred to the fact that they have weapons in their hands. That by itself cannot amount to creating any conflict or an occasion to affect the public order.

**25.** In S. Rangarajan's case (supra), the entire film was devoted to the caste conflict and as to how a girl from a higher caste takes the advantage of the benefits meant for the reserved category. In para 50 of that judgment, the court has referred to the plea put forward by the Tamil Nadu Government. The State Government alleged that some organisations of Schedule Castes / Scheduled Tribes has been agitating that the film should be banned as it hurts the sentiments of the people belonging to Scheduled Castes/ Scheduled Tribes. In para 51 of the judgment, the court noted that the film had won National Award and then the court put the anguished question to itself "What good is the protection of freedom of expression if the State does not take care to protect it?" In the film, there is a scene wherein the heroin states that "Bharat Mata" was in the hands of those who were instigating masses on the basis of caste and language, as noted in para 32 of the judgment of the Apex Court. The High Court had found that portion to be objectionable. The Supreme Court commented that it

failed to understand as to how this expression in the film wit criticism of reservation policy will affect the security of the State.

**26.** Judges by the standards, which the FCAT has sought to apply in the present case, 'Mee Nathuram Godse Bolton' was a fit case to uphold the order forfeiting the book inasmuch as it sought to explain the murder of Mahatma Gandhi. Yet the Full Bench of the High Court has in clear terms held that even though the sense of outrage at the unfair criticism of the Father of the Nation could be justified, the tolerance of a diversity of view points and the acceptance of the freedom to express are cardinal values which lie at the foundation of a democratic form of Government. As observed in Ranjaranjan's case (supra), in democracy it is not necessary that everyone should sing the same song and again as observed in para 53 of that judgment, open criticism of government policies and operations is not a ground for restricting expression. In fact, this democratic spirit is best explained in the dissenting judgment of Vivian Bose J. in S. Krishnan v. State of Madras reported in MANU/SC/0008/1951 : [1951]2SCR621 . The Petitioner was detained under the Preventive Detention Act and had sought to challenge it. Bose J. in para 64 commented as follows:-

"It is perhaps ironical that I should struggle to uphold these freedoms in favour of a class of persons, who if rumour is to be accredited & if the list of their activities furnished to us is a true guide, would be the first to destroy them if they but had the power. But I cannot allow personal predilections to sway my judgment of the Constitution. As Lord Justice Scrutton remarked in Rex v Home Secretary, (1923) 92 L.J.K.B. 797:

"It is, indeed, one test of belief in principles if you apply them to cases with which you have no sympathy at all."

& as Homes J. of the United States Supreme Court said, speaking of the American Constitution,

"If there is any principle of the Constitution that more imperatively calls for attachment than any other 'it is the principles of free thought - not free thought for those who agree wit us but freedom for the thought that we hate."

**27.** In the present case, the Petitioner is trying to espouse the cause of peace and against spread of weapons, communal hatred and war. It is in the context of making of this documentary that the above referred three scenes are incorporated therein. It is a matter of his legitimate right to decide as to what should be included therein and we have no hesitation in saying that neither of the two cuts recommended are in any way justified. The Petitioner has only recorded a demonstration in one scene and then the speech of a Dalit leader in another. It was his choice to include both these scenes and even what is stated by the demonstrators or in the speech of the Dalit leader, is not conflicting with the theme of the documentary. Similarly as far as the addition recommended is concerned, the Petitioner submits, and in our view rightly, that the same was totally uncalled for. It is for the Petitioner to decide and it is in the context of the subject that the particular scenes of the political leaders appear. In this context, it is material to note that this is not the first time that the documentaries made by the Petitioner are obstructed. Earlier, a documentary which was made by him on "Shaheed Bhagat Singh" was not being telecast on Doordarshan and the Petitioner had to file a writ petition to seek an order in that behalf, which a learned Single Judge had granted in his judgment reported in 1997 (1) BCR 9. Similarly later

on when the Petitioner made another documentary film "Ram Ke Nam", that was also refused screening by Doordarshan inspite of the fact that it won various Awards. The Petitioner had to approach this court once again and a learned Single Judge of this court by his judgment directed telecasting of the said film, as reported in (1997) 3 BCR 438.

**28.** Mr. Sebastian submits that the Petitioner stands for peace and for the Gandhian ideology which is not being approved by the political rulers of the day and it is therefore that the present documentary is also being put to variety of difficulties. Various cuts were suggested from time to time and finally now it has come to three cuts. It is material to note that strangely enough, a petition was filed concerning the present documentary being Writ Petition (Lodging) No. 646 of 2003 by Film Censor Board for quashing the order of the FCAT restricting the cuts only to two in number and one addition, and submitting that there should be 21 cuts as originally recommended. Wisely enough, the authorities of the Respondents realised it in time that such a petition could not be filed by a deciding authority and the same was therefore withdrawn as recorded in the order passed by this Bench on 5th April 2003. This however goes to support the submission of Mr. Sebastian that the impugned order is passed to harass the Petitioner and to see to it that he is put into difficulties and the documentary made by him is put to difficulties some way or the other.

**29.** It is also material to note that when this petition was being argued, a further affidavit was filed on behalf of the Respondents affirmed on 23rd March 2003 to contend that the entire epilogue in the documentary shown to us was not there is the original documentary shown to the Board. This is denied by the Petitioner and rightly so by filing a reply on 26th March 2003. We have seen the documentary carefully and until the end of the film (including the epilogue) the word "censored" was clearly visible when the film was shown to us. The stand taken by the Respondents is false and most unfortunate to say the least.

**30.** For the reasons stated above, we hold that the two cuts and one addition, as recommended under the impugned order, affect the freedom of speech and expression of the Petitioner under Article 19(1)(a) of the Constitution. They go beyond the parameters prescribed under Sub-section (1) of Section 5B of the Cinematograph Act, 1952. Accordingly, we allow this petition and set aside the impugned order passed by the FCAT and direct the Respondents to issue "U" Certificate for public exhibition of the documentary with no deletion and/or addition therein. The certificate shall be issued within one week from receipt of an authenticated copy of this order. Rule is made absolute accordingly.

**31.** Mr. Sebastian presses for the costs of the petition. In the facts of the present case and on the background as narrated above, we would have been justified in awarding appropriate costs. However, only because the impugned order is a quasi judicial order passed by a Tribunal, we are refraining from awarding the costs.

**32.** Before we conclude, we would like to record the oft-stated proposition that an issue may be one but there are many facets of looking at it. It is quite possible that the persons in authority today may feel that what they see is the only correct facet of it though it may not be so. It is only in democratic form of government that the citizens have the right to express themselves fully and fearlessly as to what is their view point towards the various events which are taking place around. By suppressing certain view point, it is not only the propagator of the view point who suffers but it is the society at large and equally the people in authority who suffer. This is because

they fail to receive the counter-view and it may eventually lead to an immense damage to the society due to an erroneous decision at the hands of the persons in authority in the absence of the counter-view. That apart, the freedom of speech and expression is important not merely for the consequences that ensue in the absence thereof but since the very negation of it runs as an anti-thesis to basic human values, instincts and creativity. It is high time that the persons in authority realise the significance of freedom of speech and expression rather than make and allow such attempts to stifle it.

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