

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 11th December, 2017

+ **W.P.(C) 11992/2016**

CROSSWORD ENTERTAINMENT PRIVATE
LIMITED

..... Petitioner

versus

CENTRAL BOARD OF FILM
CERTIFICATION & OTHERS

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Shashank Garg with Mr Tariq Khan

For the Respondents : Ms Suparna Srivastava for R-1 & 2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. The petitioner impugns the order dated 24.11.2016 passed by the Film Certificate Appellate Tribunal (FCAT) and also the Order-in-Original dated 14.06.2016 passed by the Central Board of Film Certification declining to issue a Certificate for exhibition of the film entitled "*Mohalla Assi*" and further seeks a direction to respondent No.1 to give the requisite Certificate to the Film "*Mohalla Assi*" for exhibition without any cuts/modifications/excisions.

2. As per the petitioner, the film "*Mohalla Assi*" is based on a

popular Hindi Novel “*Kashi Ka Assi*” of Shri Kashinath Singh. It is stated to be a satire on the globalization of the pilgrimage city Varanasi (Banaras) and the challenges that Varanasi and its culture may face due to sweeping changes brought in by liberalization. It is contended that “*Assi*” is a ghat in Varanasi (Banaras) on the banks of Ganges River and the Film is based in a famous and historical “*Mohalla*” (locality) by the ghat, on the southern end of Banaras.

3. It is contended that Shri Kashinath Singh has been granted one of the highest literary awards, i.e. Sahitya Academy Award in the year 2012 and is one of the most respected names in Modern Hindi Literature. Shri Kashinath Singh was a professor in Head of the Department in Banaras Hindu University and is familiar with the cultural milieu of Banaras. The novel “*Kashi Ka Assi*” was first published in Literary magazine ‘*Hans*’ as a series of five stories.

4. The petitioner submitted an application for certification of the film on 23.03.2016. By order dated 11.04.2016, the Central Board of Film Certification communicated the refusal of grant of Certificate citing the following reasons:-

“Reasons for “Certificate Refused” to the film

The movie is full of abusive words, derogatory remarks against a particular community, inflammatory speeches, political linkups, sentiments are hurting for a particular local area, abusive words against women, hence refused for certification as it may hurt the feelings of community, law and order problem etc. under guidelines, under

Section 5(B) 2(ii)(vi)(vii)(ix)(xii)(xviii) and 3(1). ”

5. The petitioner approached the Revising Committee, however, by the impugned order dated 14.06.2016, the Revising Committee also refused to issue the Certificate citing the following reasons:-

“Reasons for “Certificate Refused” to the film.

The form and content of the film are highly derogatory of humans, cult, culture, religion including but not limited to mythology. “Mohalla Assi’ has lots of potential to incite communal disharmony and disturb the peace of people, Freedom of speech and expression have been misused and abused under the garb of “so called” art, The film violates guidelines 2(vii), 2(viii), 2(ix), 2(xii), 2(xiii), 2(xv), 2(xvii) and 2(xviii). ”

6. The petitioner thereafter filed an Appeal under Section 5(c) of the Cinematograph Act, 1952 before the FCAT. The FCAT, by the impugned order dated 24.11.2016, *inter alia* directed as under:-

“ **** * ”

5. The film deals with both political and religious issues which are sensitive in nature and therefore the film in its present format may require certain modifications. We are of the view that the appellant should introduce following disclaimer at the beginning of the film which should be shown for a minimum of 10 seconds and the disclaimer should visually prominent and in audio format also in both English and Hindi and also carry out the cuts mentioned herein below:-

Disclaimer

“The views expressed by individuals in the film are solely their own views and the same are not intended to hurt/defame any person, caste, community, religion,

institution, organization or nationality”

Cuts/Excisions/Modifications

S.No.	Cuts/modifications/Excisions	Guidelines
1.	Delete the dialogue of Savitri's neighbour 'Tumhare gharwale langot ke pakke hai na' and "Dono tango ke beech mein"	2(vii)
2.	Reduce to flash the love making scene of Indian man and foreign girl.	2(vii)
3.	At 08:03, Delete the word 'Maroge' from the dialogue 'Brahmano ki maroge.	2(xii)
4.	At 14:20, Delete the word 'Pichwade'	2(vii)
5.	At 11:56, Delete the word 'Rashtra' from 'Rashtrabhasha' from the dialogue 'Yeh Assi ki Rashtra Bhasha Hai'	2(xiv)
6.	At 15:00, delete the word 'Bhosdike' said by man dressed as Shiva while talking to Panditji at the Ghat and wherever else.	2(vii)
7.	At 45:00, in the love making scene delete visual of man feeling/touching woman between her legs.	2(vii)
8.	Delete the conversation/scene where suggestion is made to remove the Shiv temple and make a latrine there. Further also remove the scenes taking away the Shiv idol and putting the same at various places.	2(vii)
9.	Mute the word 'Babri' wherever it occurs.	
10.	Mute the words Bhajpa, Advani, Atal Bihari, Mulayam, Laloo' etc. wherever they occur.	

7. *After the above cuts/modifications/excisions are carried out by the appellant, the Tribunal will review the film and reconsider the matter.”*

8. The respondents, in their counter-affidavit, have contended that the film has to be judged in its entirety from the point of view of its over-all impact and is to be examined in the light of the period depicted in the film and the contemporary standards of the country

and the people to which the film relates. Though it is admitted in the counter-affidavit that the film forming subject-matter of the present petition is based on a novel and the novelist has been awarded Sahitya Academy Award, it is, however, contended that the novel and the script of the film differ hugely in their impact. The film (audio/video) is short, dramatic with a heavy sensory effect. Films have the ability to explore the dramatic possibilities of single words and words added in succession whereas novel build on the drama and give the reader time to reflect. Film takes the audience through a dramatic depiction, giving no time to reflect and demanding absolute attention at all times, thus leading to an emotional arousal. The dramatic events in novels can be more complex, more detailed and more sustained but not so with the Film.

9. With regard to the subject of the Film, it is contended in the counter as under:-

“10. That in the subject film, drama is created by using abusive language in every scene and dialogue. The continuous usage of abusive language (hammering) can be shocking to the sensibilities of diverse people. Even if, as the Petitioner contends, ‘cuss words’ have been an integral part of the debates in the original novel, the same being brought out in dramatic auditory sound can be quite shocking to an uninitiated audience. It is submitted that the medium of a film must always be responsible and sensitive to the values and standards of the society. The present film’s language is certainly not sensitive to all sections of the society who will end up; watching it. While Respondent No.1 agrees that the

subject of the film and the debate it encourages in the society is good. However, in view of guideline 2(vii) set out above, Respondent No.1 has objected to the use of continuous derogatory language to dramatize the debate and discussion. A film maker must have the art of showing things without using vulgar and derogatory language in every frame. Unlike a novelist, a film maker has many tools to present an idea. It should not be forgotten that Charlie Chaplin made provocative and strong films without using a single word. Using 'cuss language' is neither an art nor a necessity. India, since ancient times, has seen many poets and writers and dramatists who have protested the corruption and depravation of society by using language artfully. Respondent No.1 submits that the present film maker is merely seeking the blanket 'freedom of expression' for his inability to be aesthetically provocative. Freedom of expression is not absolute. This freedom has to be exercised with due care. The present film has used derogatory language which may hurt the sentiments of many people and may also incite violence and disturb communal harmony. Therefore Respondent No.1 is within its rights to refuse, certification to the film being displayed for public viewing."

10. In terms of the directions of the Court, a private viewing of the film was organised and the film was viewed by the Court in the presence of the petitioner, Officials of the Respondent and the respective counsels.

11. To better appreciate the contentions of the parties, it would be appropriate to examine the theme of the film and the novel on which it is stated to be based. The petitioner in the petition has elaborated the

central theme of the film as under:-

“8. That ‘Kashi ka Assi’ was first published in the popular and much respected literary magazine ‘Hans’ as a series of five stories. The Petitioner would like to draw the attention of this Hon’ble Court to the following:

- a. Post the stories being published in ‘Hans’, there were debates on the form and style of narrative of “Kashi ka Assi” and the cuss words were an integral part of the debate.*
- b. According to Shri. Kashinath Singh, the novel is an account of debates that took place in a popular tea shop of Assi in Banaras (also known as Varanasi or Kashi the ancient name of Banaras) called ‘Pappu ki Dukah’. Most of the characters of the novel are living in Varanasi and some of the major characters are alive and have never objected to literary works and/or performances based on these stories.*
- c. It is pertinent to note that ‘Kashi ka Assi’ had such an impact on its readers that special editions were published on critique of ‘Kashi Ka Assi’ and several articles were written by scholars in the Hindi Heartland praising the unique work of Shri. Kashinath Singh.*
- d. That till date, there have been 12 editions of the said novel (Kashi ka Assi) published in the last 10 years after its first publication in year 2006 as a collection of stories/novel. Special editions on critique of the novel have also been published in several literary magazines including Banas - a literary magazine which clearly reflects the popularity of the novel among the public at large.*

- e. *'Kashi Ka Assi' has also been interpreted in the visual medium as Dramas by prominent theatre directors of the country.*
- f. *'Kashinama', a play based on the fourth story of 'Kashi Ka Assi' has represented Asia at the German theatre festival and has also been performed several times by veteran theatre actor and director 'Usha Ganguli' at various places including at Varanasi. In its first performance at Kolkata, respected people of Kolkata were present viz. Hon Chief Minister of Bengal, Shri Buddhadev Dasgupta, internationally acclaimed film maker Mrinal Sen, etc. The same story is the central story of the FILM. Even, the performance of Kashinama was initially opposed by a section of audiences in Varanasi before the play was staged as they were ignorant of the content of the story. However, after its performance it was well received by the audiences. The same story is the central story of the FILM as both the play and the FILM are based on the book 'Kashi Ka Assi'. The latest edition of the play was held in Shri Ram Centre recently without inciting any communal disharmony and public disorder.*

9. *That extensive works and material related to the book 'Kashi Ka Assi' on which the FILM is based are already available in the public domain for several years. The said works and material are in continued existence without inciting any communal disharmony and/or disturbing the peace of people for several years. It is pertinent to note here that, the Director and screenplay Writer of the FILM, Dr. Chandraprakash Dwivedi is a national award winning film maker and several creative professionals involved in creation of the FILM are National award winners or recipient of National*

Honours like Padma Shree and Sangeet Natak Akademy Award etc. As noted earlier, majority of the dialogues that form a part of the screenplay of the FILM are a part of the original text of the said book 'Kashi Ka Assi'.

10. That the main protagonist of the FILM, Dharmanath Pandey, is a Sanskrit Scholar who teaches 'Vedant'. He also sits on the Ghat of Assi in the mornings to attend to pilgrims visiting Banaras and offers them 'Ganga Jal'. Dharmanath Pandey is a crusader against the cultural pollution that is slowly spreading in Banaras. Protecting Sanskrit and Sanskriti are his main concerns. He is caught between sweeping changes that are happening in the country post liberalization and his personal crisis. The FILM depicts that India is going through times of turbulence. The agitation for Ram Janma Bhoomi has started getting momentum and the Nationalist parties and Nationalist social forces are emerging strongly and successfully on the political and social scene. In this social and political back drop, the FILM is a unique and interesting story of Dharmnath Pandey and a popular tea shop known as 'Pappu ki Dukan' and some other interesting characters. It is a poignant tale of how culturally conscious people, trying to live with righteous means and trying to protect traditions and cultural heritage, are being marginalized and struggling for their existence and on the other hand those who spare no foul means are becoming successful. The story of the Film revolves around the cultural degradation, that it is threatening present day Banaras and issues that needs to be looked into. Apart from the said Dharmanath Pandey, the FILM'S characters have a crafty and clever tourist guide and an unsuccessful barber in prominent roles in the FILM. There is also a character of 'Bahurupiya' (an imposter) in the FILM. This Bahurupiya impersonates himself as Shiv and earns his livelihood by getting himself clicked with foreign

tourist for a price. He constantly fights with Dharmnath Pandey as Pandey is against his way of living by impersonating Shiv for his livelihood. The FILM depicts how the several characters of the FILM come to accept the realities of their existence and time. The FILM is a story of the Cultural and Spiritual capital of India-Banaras and its Mohalla Assi.

11. That Varanasi or Kashi (the ancient name of Varanasi) is known for promoting debates, discussions and dialogues. 'Pappu ki dukaan' in Mohalla Assi represents the same tradition of dialogues, debates and discussion with their unique humour. The discussions between Mends in the shop depicted in the FILM do not depict malice, jealousy, anger or hatred, but, it is a healthy criticism which reflects social realities of its time in Varanasi. There is real freedom of expression and speech in the said Pappu's Tea Shop which its inhabitants utilize regularly with their unique style, peppered with humour and loving expletives as are very common to the place where the story of the FILM originates. Overall, the central theme of the FILM as stated above which has been depicted in a creative manner refers to some events of 1989 and 1990 such as Ram Janmabhoomi movement and Mandal Commission and it is obvious from the very contents and debates depicted in the FILM that the characters of the FILM are a group of highly patriotic individuals who believe in healthy debates. Further, a very important scene in the FILM clearly depicts a scenario, wherein, the regular group of persons who meet at the said Tea Shop have a healthy and peaceful debate with a Muslim character in the FILM and the complete discussion in this scene is enough to depict the FILM is bent towards promoting communal harmony and not communal disharmony or disturb the peace of people. All discussions in the FILM depict healthy mutual logical debates which depict the

views of several persons from both sides of the coin and balance out the same in a manner that the same cannot be derogatory to humans, cult, culture, religion or mythology in any manner.

12. *That people of Assi (a locality depicted in the said FILM), participating in debates over a cup of tea are having diverse political views and they are of all political hues and colour, but, there is under current of unity as society. They fiercely debate, the issue troubling the discussing parties and the Nation 'India' without malice and any hatred that, makes people of Assi and Pappu ki Dukan a unique society and place in the whole of Banaras and India, which represent "Unity in diversity" of India.*

13. *It is submitted that debates, dialogues, discussions (known as vada in Sanskrit language) depicted in the FILM were the quintessential of Indian spirit, enabling and promoting the growth of different philosophical and knowledge systems of India. It percolated deep into our mindset and enriched the moral, ethical, religious and socio-cultural edifice of anything that was essentially Indian in nature. It subsists on diversity and its tradition envisages pluralism. Debates, dialogues, discussions involved verbal duals, attacks and even violence of speech, and all major religious systems-old or modern-were parties to it."*

12. Since the Cinematograph Act, 1952 (hereinafter referred to as 'the Act') operates in the realm of a reasonable restriction imposed by the State, in terms of Article 19(2) of the Constitution of India, on the fundamental right of freedom of speech and expression, it would be appropriate to examine some of the relevant provision thereof as well

as the guidelines framed thereunder:

13. Section 5A of the Act reads as under:-

“5A. Certification of films – (1) If, after examining a film or having it examined in the prescribed manner, the Board considers that-

- (a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (i) of sub-section (1) of section 4, it shall grant to the person applying for a certificate in respect of the film a “U” certificate or, as the case may be, a “UA” certificate, or*
- (b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an “A” certificate or, as the case may be, a “S” certificate; and cause the film to be so marked in the prescribed manner.”*

14. Section 5B of the Act lays down the principles for guidance in certifying films and runs as under:-

5B. 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 interests 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.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.”

15. The guidelines framed by the Central Government in terms of Section 5B(2) of the Act to achieve the objects of the Act *inter alia* lay down that CBFC shall ensure that:-

- “(i) anti-social activities such as violence are not glorified or justified;*
- (ii) the modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted;*
- (iii) scenes –*
 - (a) showing involvement of children in violence as victims or perpetrators or as forced witnesses to violence, or showing children as being subjected to any form of child abuse.*
 - (b) showing abuse or ridicule of physically and mentally handicapped persons; and*
 - (c) showing cruelty to, or abuse of animals, are not presented needlessly*
- (iv) pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may*

have the effect of desensitising or dehumanising people are not shown;

(v) *scenes which have the effect of justifying or glorifying drinking are not shown;*

(vi) *scenes tending to encourage, justify or glamorise drug addiction are not shown;*

(a) *scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown;*

(vii) *human sensibilities are not offended by vulgarity, obscenity or depravity;*

(viii) *such dual meaning words as obviously cater to baser instincts are not allowed.*

(ix) *scenes degrading or denigrating women in any manner are not presented;*

(x) *scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of a similar nature are avoided, and if any such incidence is germane to the theme, they shall be reduced to the minimum and no details are shown.*

(xi) *scenes showing sexual perversions shall be avoided and if such matters are germane to the theme, they shall be reduced to the minimum and no details are shown.*

(xii) *visuals or words contemptuous of racial, religious or other groups are not presented.*

(xiii) *visuals or words which promote communal, obscurantist, anti-scientific and anti-national*

attitude are not presented.

(xiv) the sovereignty and integrity of India is not called in question;

(xv) the security of the State is not jeopardized or endangered.

(xvi) friendly relations with foreign States are not strained;

(xvii) public order is not endangered

(xviii) visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented

Explanation: Scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of court will come under the term "Contempt of Court" and

(xix) National symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950)."

16. In the present case the Board has relied upon guidelines 2(ii)(vi)(vii)(ix)(xii)(xviii) (underlined hereinabove) for denying the certification of the subject film and Guideline 3(i) which stipulates that the Board of Film Certification shall also ensure that the film *inter alia* is judged in its entirety from the point of view of its overall impact.

17. As noticed above, the FCAT in its order has held that the film

deals with both political and religious issues which are sensitive in nature and therefore the film in its present format may require certain modifications. It has directed introduction of a disclaimer as well as certain cuts prior to submission of the film for a review.

18. The petitioner rendered an explanation/clarification with regard to the each of the cuts/excisions/modifications directed by FCAT in the following manner:-

Cuts/Excisions/Modifications

S.No.	Cuts/modifications/Excisions	Explanation/Clarification	Judgment
1.	Delete the dialogue of Savitri's neighbour "Tumhare gharwale langot ke pakke hai na" and "Dono tango ke beech mein"	'Langot ka pakka hona' is a popular phrase in Hindi and used in Hindi heartland. It means man of character. It is clarified Taang" is not "Jaangh". There are several references in Upanishads regarding vulva and vagina. The dialogue of Ashwamedh yagya is provocative and obscene still are accepted as part of our rituals. The poetry of Kalidas explicitly depicts the union of Shiva and Parvati. There are plenty of classical Sanskrit poetry depicting love and erotic art. [Please note that we are seeking a certificate under category 'A'.	K.A. Abbas vs, Union of India & Anr., (1970) 2 S.C.C. 780. [Para 49 and Para 50] Bobby Art International, Etc vs Om Pal Singh Hoon & Ors AIR 1996 SC 1846
2.	Reduce to flash the love making scene of Indian man and foreign girl.	India has adorned erotic sculptures on temple walls. Reducing the length or reducing it to flash does not	Bobby Art International Etc vs. Om Pal Singh Hoon & Ors AIR

		<p>change the content of the scene. Obscenity cannot be decided on the length of the scene. We would like to mention here a film Heat and Dust where the prince or the king thrust his hand in the undergarment of the foreign actress (the prince role was played by shashi Kapoor). Please refer to the matter of bond kissing his girls in films or making love in his films. India has produced literature on art of love making – Kamasutra, kok shastra, kuttanimatam are the revered literature of India.</p> <p>[Please note that we are seeking a certificate under category 'A'.</p>	1996 SC 1846
3.	<i>At 08:03, Delete the word 'Maroge' from the dialogue 'Brahmano ki maroge.'</i>	It is an expression used by a brahmin priest reflecting current situation where Dharmanath pandey a Brahmin himself is against Brahmin. It is frequently used in television and radio. Bajate raho is one such example.	Phantom Films Pvt. Ltd. and Anr vs The Central Board of Certification 2016 (4) ABR 593 [Para 60]
4.	<i>At 14:20, Delete the word 'Pichwade'</i>	The same word has been used in many Hindi films. (e.g. saat ucchakke)	Director General, Directorate General of Doordarshan and Ors. vs Anand Patwardhan & Anr AIR 2006 SC 3346 [Para 13 and Para 14]
5.	<i>At 11:56, Delete the word 'Rashtra' from 'Rashtrabhasha' from the dialogue 'Yeh Assi ki Rashtra Bhasha Hai'</i>	It is the exact dialogue from the novel kashi ka assi. It is in no way derogatory or hurt the sensibilities of the audience.	S. Rangarajan v. P. Jagjivan Ram [1989] 2 SCR 204
6.	<i>At 15:00, delete the word</i>	Bhosadi ke has been used in	Ajay Gautam V.

	<i>'Bhosdike' said by man dressed as Shiva while talking to Panditji at the Ghat and wherever else.</i>	several Hindi films. He is not shiva here, he is an imposter. He is talking as bahrupiya, a person who earn his livelihood.	Union of India AIR 2015 Delhi 92 [Para 9, 10, 11 and 12]
7.	<i>At 45:00, in the love making scene delete visual of man feeling/touching woman between her legs.</i>	These scenes are common in movies with category 'A' certificate and in no circumstance promotes obscenity or depicts vulgarity. [Please note that we are seeking a certificate under category 'A'.]	Bobby Art International, Etc vs Om Pal Singh Hoon & Ors AIR 1996 SC 1846
8.	<i>Delete the conversation/scene where suggestion is made to remove the Shiv temple and make a latrine there. Further, also remove the scenes taking away the Shiv idol and putting the same at various places.</i>	This is the essence of the film. The play based on it has been performed in kashi and all over the country by veteran theatre director usha ganguli, 125 shows have been performed. Play with the same theme was the only entry from Asia in Stuttgart theatre festival. Please refer to the comment of Hon'ble PM of India – Toilet first temples later and subsequent reaction of Shri Pravin Togadia. The matter is available on the internet. This is the foundation of the film that a man in need will do any compromise. Even faith would be compromised in struggle to survive. Every place is created by god that is the final argument given by a resident of Assi.	S. Rangarajan v. P. Jagjivan Ram [1989]2SCR204 [Para 21]
9.	<i>Mute the word 'Babri' wherever it occurs.</i>	Babri has a historical connotation. We cannot remove this page of history from consciousness of India and our political and social and historical discourses. It is noteworthy that films like	Lakshmi Ganesh Films and Ors. vs Government of A.P. And Ors. 2006 (4) ALD 374 [Para 82]

		chandani bar and saat khoon maaf have shown babri falling.	
10.	<i>Mute the words Bhajpa, Advani, Atal Bihari, Mulayam, Laloo' etc. wherever they occur.</i>	There is word "Laluaa" and not Laloo, There is word "Mulaima" and not mulayam and only surnames have been used. Further, these names are not shown in a derogatory manner. Further, movies like Happy bhaag jayegi mentions "Jinnah" and several other names like Ghalib And 'Phas gaye re obama' mentions name of American president.	F.A. Picture International vs Central Board of Film v CBFC & Anr. [Para 13]

19. It may also be expedient to examine the legal position with regard to Certification of Films keeping in view the dynamics of the society and the reasonable restrictions on the fundamental right of Freedom of Speech and expression.

20. In *F.A.Pictures International Vs. CBFC and Anr.* AIR 2005 BOM 145, the Court *inter alia* held as under:-

"6A.Films have always been regarded as constituting a powerful medium of expression. Succeeding generations bred on a diet of the electronic media may well cause a sense of spondaic to those who decry the loss of the habit of reading....."

7. Artists, writers, play rights and film makers are the eyes and the ears of a free society. They are the veritable lungs of a free society because the power of their medium imparts a breath of fresh air into the drudgery of daily existence. Their right to communicate ideas in a medium

of their choosing is as fundamental as the right of any other citizen to speak. Our Constitutional democracy guarantees the right of free speech and that right is not conditional upon the expression of views which may be palatable to mainstream thought. Dissent is the quintessence of democracy. Hence, those who express views which are critical of prevailing social reality have a valued position in the constitutional order. History tells us that dissent in all walks of life contributes to the evolution of society. Those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon.

12. Films which deal with controversial issues necessarily have to portray what is controversial. A film which is set in the backdrop of communal violence cannot be expected to eschew a portrayal of violence. The producer of a film on the Second World War cannot be true to his conscience if the horrors of war not brought home by the film. The film "Life is Beautiful" constitutes a contemporary master piece as much for its moving depiction of the atrocities of the period as much as in the ability of the director to find humor in the lives of those on the verge of extinction in gas chambers. The director has available to him all the tools of trade. Satire, humor and the ability to shock each one out of the mundane levels of existence is what embellishes are forms. The Constitution protects the right of the artist to portray social reality in all its forms. Some of that portrayal may take the form of questioning values and mores that are prevalent in society. The power of literature lies in the ability of the writer to criticise commonly held beliefs and ordinary human foibles.

Equally, a writer, producer and director of a film have the discretion to depict the horrors of social reality. In a film based on a theme of communal violence it would be most inappropriate to expect that the film should eschew a reference to what has taken place.

13. Both the certifying authority and the Tribunal were of the view that certain characters and incidents are identifiable with actual personalities and individuals. This again is a most impermissible ground to reject the certification of a film. The protection of the Constitution does not extend only to fictional depictions of artistic themes. Artist, film makers and play rights are affirmatively entitled to allude to incidents which have taken place and to present a version of those incidents which according to them represents a balanced portrayal of social reality. To say that the violence which took place in the stage of Gujarat is a "live issue" and a "scar on national sensitivity" can furnish absolutely no ground for preventing the exhibition of the film. No democracy can countenance a lid of suppression on events in society. The violence which took place in the State of Gujarat has been the subject-matter of extensive debate in the press and the media and it is impermissible to conjecture that a film dealing with the issue would aggravate the situation. On the contrary, stability in society can only be promoted by introspection into social reality, however grim it be. Ours, we believe, is a mature democracy. The view of the censor does no credit to the maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme. The certifying authority and the Tribunal were palpably in error in rejecting the film on the ground that it had characters which bear a resemblance to real life personalities. The constitutional protection under Article 19(1)(a) that a film maker enjoys is not conditioned on

the premise that he must depict something which is not true to life. The choice is entirely his. Those who hold important positions must have shoulders which are broad enough to accept with grace a critique of themselves, critical appraisal is the cornerstone of democracy and the power of the film as a medium of expression lies in its ability to contribute to that appraisal.

17. *The Supreme Court had occasion to revisit the issues which arise before the Court when an appeal was carried against the judgment of the Delhi High Court in relation to the film “Bandit Queen”. In {Bobby Art International versus Om Pal Singh Hoon}, Mr Justice S.P.Bharucha (as the learned Chief Justice then was) held that a film “that illustrates the consequences of a social evil necessarily must show that social evil.” No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil.” Dealing with the theme of the film, the Court held thus:*

“First the scene where she is humiliated, stripped naked, paraded, made to draw water from the well, within the circle of a hundred men. The exposure of her breasts and genitalia to those men is intended by those who strip her to demean her. The effect of so doing upon her could hardly have been better conveyed than by explicitly showing the scene. The object of doing so was not to titillate the cinema goers lust but to arouse in him sympathy for the victim and disgust for the perpetrators..... “Bandit Queen” tells a powerful human story and to that story the scene of Phoolan Devi’s enforced naked parade is central. It helps

to explain why Phoolan Devi became what she did : her rage and vendetta against the society that had heaped indignities upon her.”

21. The Supreme Court in *K.A.Abbas Vs. Union of India & Another*: (1970) 2 SCC 780 elucidated the task and role of the censors in the following terms:

“50. We may now illustrate our meaning how even the items mentioned in the directions may figure in films subject either to their artistic merit or their social value over-weighting their offending character. The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. 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 forever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves- a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same

way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censors scissors. Thus audiences in India can be expected to view with equanimity the story of Oedipus son of Latius who committed patricide and incest with his mother. When the seer Tiresias exposed him, his sister Jocasta committed suicide by hanging herself and Oedipus put out his own eyes. No one after viewing these episodes would think that patricide or incest with one's own mother is permissible or suicide in such circumstances or tearing out one's own eyes is a natural consequence. And yet if one goes by the letter of the directions the film cannot be shown. Similarly, scenes depicting leprosy as a theme in a story or in A documentary are not necessarily outside the protection. If that were so Verrier Elwyn's Phulmat of the Hills or the same episode in Henryson's Testament of Cresseid (from where Verrier Elwyn borrowed the idea) would never see the light of the day. Again carnage and bloodshed may have historical value and the depiction of such scenes as the sack of Delhi by Nadirshah may be permissible, if handled delicately and as part of an artistic portrayal of the confrontation with Mohammad Shah Rangila. If Nadir Shah made golgothas of skulls, must we leave them out of the story :because people must be made to view a historical theme without true history ? Rape in all its nakedness may be objectionable but Voltaire's Candide would' be meaningless without Cunegonde's episode with the soldier and the story of Lucrece could never be depicted on the screen.

51. *Therefore it is not the elements of rape, leprosy, sexual immorality which should attract the censor's scissors but how the theme is handled by the producer. It must, however, be remembered that the cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous etchings of Goya do not horrify one so much as the same scenes rendered in colour and with sound and movement, would do. We may view a documentary on the erotic tableaux from our ancient temples with equanimity or read the Kamasutra but a documentary from them as a practical sexual guide would be abhorrent."*

22. *Phantom Films Private Limited Vs. The Central Board of Certification*, 2016 (4) ARB 593, the Bombay High Court elaborated the concept of examination of the work as a whole by the Censor Board in the following words:

"43. Once the test is that the work must be seen as a whole and viewed in entirety, then, it will not be permissible to pick and choose isolated scenes or events or characters. It will not be permissible to pick up some lines from some scenes and few dialogues and read them out of context. We have noted that there is no denial of the fact that "Udta Punjab" is a film depicting the menace of drugs. The backdrop and setting chosen is of the State of Punjab. It is open to a creative person to choose a particular setting and backdrop and move his story forward with due regard to the same. It is entirely for him to choose the underlying theme and story line. The creative freedom envisages presentation of certain works as per the choice of the maker or writer. None can dictate to him as to how he should produce or make his film and what should be the contents thereof. One acting as a Board of Film Certification is not obliged to censor films. Though the word J.V.Salunke, PA Judgment -

WPL.1529.2016.doc “censor” is not to be found in the Cinematograph Act, 1952, the common parlance and dictionary meaning of that word means “an official authorised to examine printed matters, films, news etc. before public release and to suppress any part thereof on the ground of obscenity, vulgarity etc”. It is in that sense the word has been understood by the Act. It refers to a official performing a statutory duty of certifying films. The word also means “making deletions and changes”, but that is inbuilt in the power of certification of films by the board. That is but a part and parcel of the larger power. However, that is not the essential function.

Else, every certificate application can be simply refused or granted conditionally by applying a formula already evolved.

Therefore, if by law the board is empowered to make changes or deletions or cuts and these are the words employed in the impugned order, then, that power must be exercised consistent with the constitutional guarantee and the decisions of the Hon’ble Supreme Court of India. The Hon’ble Supreme Court of India, while upholding the Act, has held that it tries to achieve a balance so that creative freedom is not unnecessarily curbed.”

23. With regard to the objection to use of swear words in a film, the Supreme Court of Indian in *Bobby Art International etc. Vs. Om Pal Singh Hoon & Others* : AIR 1996 SC 1846 held as under:

32. Too much need not, we think, be made of a few swear words the like of which can be heard every day in every city, town and village street. No adult would be tempted to use them because they are used in this film.

33. In sum, we should recognise the message of a serious film and apply this test to the individual scenes

thereof : do they advance the message ? If they do they should be left alone, with only the caution of an 'A' certificate. Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene."

24. The Principles that emerge from the above judgments can be summarised as under:

- i. *[Films are regarded as constituting a powerful medium of expression.*
- ii. *Artists, writers, play rights and film makers are the eyes and the ears of a free society. They are the veritable lungs of a free society because the power of their medium imparts a breath of fresh air into the drudgery of daily existence.*
- iii. *Their right to communicate ideas in a medium of their choosing is as fundamental as the right of any other citizen to speak.*
- iv. *Our Constitutional democracy guarantees the right of free speech and that right is not conditional upon the expression of views which may be palatable to mainstream thought. Dissent is the quintessence of democracy. Hence, those who express views which are critical of prevailing social reality have a valued position in the constitutional order.*
- v. *Dissent in all walks of life contributes to the evolution of society. Those who question unquestioned assumptions contribute to the alteration of social norms. Democracy is founded upon respect for their courage. Any attempt by the State to clamp down on the free expression of opinion must hence be frowned upon.*

vi. *Films which deal with controversial issues necessarily have to portray what is controversial.*

vii. *The director has available to him all the tools of trade. Satire, humor and the ability to shock each one out of the mundane levels of existence is what embellishes are forms.*

viii. *The Constitution protects the right of the artist to portray social reality in all its forms. Some of that portrayal may take the form of questioning values and mores that are prevalent in society. The power of literature lies in the ability of the writer to criticise commonly held beliefs and ordinary human foibles. Equally, a writer, producer and director of a film have the discretion to depict the horrors of social reality.*

ix. *It is impermissible ground to reject the certification of a film on the ground that certain characters and incidents are identifiable with actual personalities and individuals. The protection of the Constitution does not extend only to fictional depictions of artistic themes. Artist, film makers and play rights are affirmatively entitled to allude to incidents which have taken place and to present a version of those incidents which according to them represents a balanced portrayal of social reality. No democracy can countenance a lid of suppression on events in society.*

x. *Stability in society can only be promoted by introspection into social reality, however grim it be.*

xi. *The constitutional protection under Article 19(1)(a) that a film maker enjoys is not conditioned on the premise that he must depict something which is not true to life. The choice is entirely his. Those who hold important positions must have shoulders which are broad enough to accept with grace a*

critique of themselves, critical appraisal is the cornerstone of democracy and the power of the film as a medium of expression lies in its ability to contribute to that appraisal.

xii. *No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil.]¹*

xiii. *[The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. 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.*

xiv. *The requirements of art and literature include within themselves- a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average man moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, it cannot be helped.*

xv. *ideas having redeeming social or artistic value must also have importance and protection for their growth. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex*

¹ *F.A.Pictures International Vs. CBFC and Anr (Supra)*

designed to play a commercial role by making its own appeal. This draws in the censors scissors.]²

xvi. *[Once the test is that the work must be seen as a whole and viewed in entirety, then, it will not be permissible to pick and choose isolated scenes or events or characters. It will not be permissible to pick up some lines from some scenes and few dialogues and read them out of context.*

xvii. *It is open to a creative person to choose a particular setting and backdrop and move his story forward with due regard to the same. It is entirely for him to choose the underlying theme and story line. The creative freedom envisages presentation of certain works as per the choice of the maker or writer. None can dictate to him as to how he should produce or make his film and what should be the contents thereof.]³*

xviii. *[Too much need not, we think, be made of a few swear words the like of which can be heard every day in every city, town and village street. No adult would be tempted to use them because they are used in this film.*

xix. *Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene.]⁴*

25. Examining the underlying theme and storyline of the subject film “Mohalla Assi” in context of the above principles, as contended by the petitioner, the film is a poignant tale of how culturally

² *K.A.Abbas Vs. Union of India & Another (supra)*

³ *Phantom Films Private Limited Vs. The Central Board of Certification (supra)*

⁴ *Bobby Art International etc. Vs. Om Pal Singh Hoon & Others (supra)*

conscious people, trying to live with righteous means and trying to protect traditions and cultural heritage, are being marginalized and struggling for their existence and on the other hand those who spare no foul means are becoming successful. The story revolves around the cultural degradation, that is threatening present day Banaras and issues that needs to be looked into. The FILM depicts that India is going through times of turbulence. The FILM depicts how the several characters of the FILM come to accept the realities of their existence and time. The FILM is a story of the Cultural and Spiritual capital of India-Banaras and its Mohalla Assi. 'Pappu ki dukaan' in Mohalla Assi represents the same tradition of dialogues, debates and discussion with their unique humour. Overall, the central theme of the FILM refers to some events of 1989 and 1990 such as Ram Janmabhoomi movement and Mandal Commission and the debates depicted in the FILM show that the characters of the FILM are a group of highly patriotic individuals who believe in healthy debates.

26. The film is stated to be based on works and material related to the book 'Kashi Ka Assi' by Shri Kashinath Singh, according to whom, the novel is an account of debates that took place in a popular tea shop of Assi in Banaras called 'Pappu ki Dukah'. It is claimed that that 'Kashi ka Assi' had such an impact on its readers that special editions were published on critique of 'Kashi Ka Assi' and several articles were written by scholars in the Hindi Heartland praising the unique work of Shri. Kashinath Singh. Till date, there have been 12

editions of the said novel (Kashi ka Assi) published in the last 10 years after its first publication in year 2006 as a collection of stories/novel. Special editions on critique of the novel have also been published in several literary magazines including Banas - a literary magazine which clearly reflects the popularity of the novel among the public at large. 'Kashi Ka Assi' has also been interpreted in the visual medium as Dramas by prominent theatre directors of the country.

27. The proposed cuts by FCAT need to be examined in the light of the central theme and principles mentioned above. It may also be kept in mind that the Petitioner has sought a certificate under category 'A' i.e. restricted to Adult audience.

28. The proposed cuts at serial no. 1 (*Delete the dialogue of Savitri's neighbour 'Tumhare gharwale langot ke pakke hai na' and 'Dono tango ke beech mein'*), serial no. 3 (*At 08:03, Delete the word 'Maroge' from the dialogue 'Brahmano ki maroge'*) and serial no. 4 (*At 14:20, Delete the word 'Pichwade'*) when viewed in the overall context of the film do not offend sensibility or morality. The manner of use of the dialogues is such that they merge with the context. The words have not been used in a vulgar or obscene manner.

29. The cuts proposed at Serial No. 2 (*Reduce to flash the love making scene of Indian man and foreign girl.*) and serial No. 7 (*At 45:00, in the love making scene delete visual of man feeling/touching woman between her legs.*) are in fact only one scene and not two. The

said scene is contextual. It does not in any manner portray obscenity or depict vulgarity. Rather the scene have been handled delicately; while depicting the context, the director has refrained from crossing the threshold of decency.

30. Cut proposed at serial No. 5 (*At 11:56, Delete the word 'Rashtra' from 'Rashtrabhasha' from the dialogue 'Yeh Assi ki Rashtra Bhasha Hai'*) relates to the use of the word '*Rashtrabhasha*' in the dialogue. Though the literal meaning of the word '*Rashtrabhasha*' is National Language, however in the film the word is used in the sentence '*Yeh Assi ki Rashtra Bhasha Hai*'. The word has been used in the context of an ordinarily spoken language of 'Assi'. The word has not been used in the context of a national language. The character in the film is using the said word to describe a universally accepted and spoken language of the people of 'Assi'. It is apparent from the depiction that the character is loosely using it only in the context of 'Assi'.

31. Objection raised to serial no. 6 (*At 15:00, delete the word 'Bhosdike' said by man dressed as Shiva while talking to Panditji at the Ghat and wherever else.*) is factually incorrect. The character playing the role of a Bahrupiya (an impressionist in the traditional performing arts of India) and dressed as Shiva does not use the word 'Bhosdike'. Rather the word is spoken by Panditji to him. Though the objection taken is factually incorrect, however, the word spoken by him or to him could offend the religious sentiments of some sections

of the society. It is observed that the said word is not necessary for the central theme of the film. The said word in the scene, therefore should be deleted, muted or bleeped.

32. The cut proposed at serial no. 8 (*Delete the conversation/scene where suggestion is made to remove the Shiv temple and make a latrine there. Further, also remove the scenes taking away the Shiv idol and putting the same at various places.*). The said scenes are the very essence of the film. The story of the film revolves around the cultural degradation, that it is threatening present day Banaras and issues that needs to be looked into. The FILM depicts how several characters of the FILM come to accept the realities of their existence and time and as to how the people of Banaras are making space in their houses by replacing temples to make accommodation available for renting to tourists to earn money for their very subsistence. How they are willing to compromise, even with faith, in their struggle to survive.

33. Objections at serial No. 9 (*Mute the word 'Babri' wherever it occurs.*) and serial No. 10 (*Mute the words Bhajpa, Advani, Atal Bihari, Mulayam, Laloo' etc. wherever they occur.*) are also not sustainable. The film depicts the contemporaneous period of the demolition of the Babri Masjid. However, the depiction of the same and the use of the word Babri and the reference to certain political leaders is not in any derogatory manner.

34. In addition FCAT has directed that the following disclaimer be incorporated at the beginning of the film which should be shown for a minimum of 10 seconds and the disclaimer should be visually prominent and in audio format also in both English and Hindi

“Disclaimer

The views expressed by individuals in the film are solely their own views and the same are not intended to hurt/defame any person, caste, community, religion, institution, organization or nationality”

The incorporation of the disclaimer does not warrant any interference as it does not prejudice the petitioner in any manner.

35. The Judgment in the case of *B.K. Adarsh Vs. Union of India* : AIR 1990 AP 100 relied upon by learned counsel for the Respondent does not further the case of the Respondents. The said judgment was cited to contend that merely because other films, with more or equal obscenity and pornography, have been certified for exhibition, it does not automatically entitle the producer of a film for certification under section 5A for exhibition.

36. As noticed above, when the subject film is examined in the light of the principles for examination of the film as a whole, the alleged offending scenes do not militate against the central theme of the film rather, they aid in conveying the message behind the predominant theme of the film. *In B.K. Adarsh* (supra), itself the court has held; *“it is the duty of the Judge to consider in each case whether a particular book, article or a motion picture is obscene. The*

offending portion or parts are also to be independently considered. In that context the tests to be laid down are the predominant theory or theme taken as a whole whether appeals to prominent interest according to the contemporary standards of the reasonable average man; whether the motion picture is not saved by any redeeming social values; whether it is patently offensive because it is opposed to contemporary standards and whether the story, incident or the dialogue likely to impair the moral standards of the public by extenuating vice or crime or depraving moral standards was it likely to give offence to reasonable minded cinema audience; what effect would it have on the minds of the general public including adolescent young children, etc. and whether it is portrayed or photographed beyond decency or morality. The decency or indecency of a particular picture, sequence or scene cannot depend upon the nature of the subject matter, but the question is one of the manner of handling with the subject matter and sociological or ethical interest or message which the film conveys to the reasonable man. The approach of the court would be from the perspective of social pathological phenomenon with a critical attitude and perform the role of a clinical doctor keeping the balance between the felt necessities of the time and social consciousness of the progress of the society eliminating the evils and propagating for the cultural evolution literary taste and pursuit of happiness in social relation, national integration and solidarity of the nation and the effect of the film thereon.”

37. The Judgments in the case of *A. Arulmozhi Vs. Government of India* : AIR 2006 Mad 49 and *P. Jagajeevan Vs. Government of India* : AIR 1989 Mad 149, relied upon by learned counsel for the Respondents also enunciate the broad principles for examination of films by the censor board, however they are not applicable, because assessment of each film would have to be made, keeping in mind the central theme of the film, the handling of the subject and sociological or ethical interest or message which the film conveys to the a man.

38. In view of the above discussion, the Writ Petition is allowed in part. The impugned orders are set aside. The cuts proposed by FCAT at serial no. 1 to 5, 7 to 10 are quashed. The cut at serial no. 6 (*At 15:00, delete the word 'Bhosdike' said by man dressed as Shiva while talking to Panditji at the Ghat and wherever else.*) is sustained, however in terms of the observations with regard to the same. The incorporation of disclaimer is also sustained. The film "*Mohalla Assi*" is directed to be certified accordingly as restricted in its exhibition to the adult audience. The Respondent shall issue the "A" certificate within a period of one week from today.

39. Dasti under signatures of Court Master.

SANJEEV SACHDEVA, J

DECEMBER 11, 2017

'Sd'