

Ramesh S/o Chotalal Dalal

Vs

Union of India and Others

Writ Petition (Civil) No. 107 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

16.02.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This writ petition was disposed of by our order dated February 1, 1988, we indicated therein that we will give our reasons shortly. This we do by this judgment.

2. The Writ Petition No. 107 of 1988 is a petition under Article 32 of the Constitution. The petitioner is a practising advocate of the Bombay High Court. He approached this Court by means of the petition under Article 32 of the Constitution for issue of a writ in the nature of Prohibition or any other appropriate order restraining the respondents, namely, the Union of India, the Director General of Doordarshan, New Delhi, Blaze Advertising Pvt. Ltd. and Govind Nihalani, being the producer from telecasting or screening the serial titled "Tamas" and to enforce petitioner's fundamental rights under Articles 21 and 25 of the Constitution and declaring the screening or televising of "Tamas" as violative of Section 5-B of the Cinematograph Act, 1952.

3. One Javed Ahmed Siddique filed a writ petition in the High Court of Bombay being Writ Petition No. 201 of 1988. The same came up before a learned Single Judge of the High Court of Bombay who while admitting the same on January 21, 1988 had granted stay of further telecasting of the said serial on TV till further orders. The respondents herein challenged the said order before the Division Bench of the Bombay High Court. The two learned Judges, namely, Justice Lentin and Justice Mrs. Sujata Manohar saw the complete serial on January 22, 1988 and vacated the stay by an order dated January 23, 1988. The judgment is impugned in the special leave petition which is taken on board and is also disposed of by this common judgment. It may also be mentioned that four episodes of the said serial have already been telecast.

4. The petitioner states that the exhibition of the said serial is against public order and is likely to incite the people to indulge in the commission of offences and it is therefore, violative of Section 5-B(1) of the Cinematograph Act, 1952 (hereinafter called 'the Act') and destructive of principle embodied under Article 25 of the Constitution. It is also contended that under Section 153-A of the Indian Penal Code, this presentation is likely to promote or attempts to promote, on grounds of religion, caste or community, disharmony or feelings of enmity, hatred or ill-will among different religious, racial, language or regional groups or castes, or communities and is further prejudicial to the maintenance of harmony between different religious, racial, language or regional groups and incites people to participate or trains them to the use of criminal force or violence or participate in such criminal acts. So, therefore, it is an offence under Section 153-A of the Indian Penal Code. Our attention was drawn to Section 153-B of the Indian Penal Code and it was submitted that the serial

is prejudicial to the national integration.

5. Serial "Tamas" depicts the Hindu-Muslim tension and Sikh-Muslim tension before the partition of India. It further shows how the killings and looting took place between these communities before the pre-independence at Lahore. "Tamas" is based on a book written by Shri Bhisma Sahni. It depicts the period prior to partition and how communal violence was generated by fundamentalists and extremists in both communities and how innocent persons were duped into serving the ulterior purpose of fundamentalists and communalists of both sides and how an innocent boy is seduced to violence resulting in his harming both the communities. It further shows how extremist elements in both communities infused tension and hatred for their own ends. That is how the two learned Judges of the High Court of Bombay mentioned hereinbefore have viewed It. They have also seen that realisation ultimately dawns as to the futility of it all and finally how inherent goodness in human mind triumphs and both communities learn to live in amity. They saw that the people learnt this lesson in a hard way. This is the opinion expressed by two experienced Judges of the High Court after viewing the serial.

6. The location of the story is Lahore. The period is just before independence. The very introductory part of the serial which was telecast on January 9, 1988 displayed that the idea and message behind the serial is to keep people away from getting involved in such violence arising out of communal animosity. By telecasting it on Doordarshan, Dr. Chitale appearing of the petitioner said, now seen by vast majority of people, the said serial is exposed to persons of all ages, who will fail to grasp the message if any behind the serial. The very first serial, according to the petitioner, depicts one person who is reported to be a member of scheduled cast from the Hindu community being asked by one Thekedar to get a pig killed and bring its dead body in order to serve the meal for an Englishman. The dead body is shown to be axed and collected by one person named 'Kalu' who is represented to be a Christian. Kalu gets a dead pig from the said member of the scheduled cast Hindu who killed it. That dead pig is shown to be found at the doorsteps of a mosque. This, according to the petitioner, was provocative and was bound to result in instigation in Hindus against Muslims and consequently to rouse Muslim anger resulting in some reaction on the part of the Muslims, which in its own turn is bound to have reaction by way of some acts of violence on the part of Hindus. According to the petitioner, the total result would be that there is likelihood that members of both the communities will rise in passion and anger against each other and take to acts which would lead to communal violence and riots.

7. The petitioner further states that in the first episode shown on January 9, 1988 one elderly Hindu who is depicted as a 'Guru', a preceptor, and is shown as giving inspiration/advice and instigation to a young boy to practice violence to begin with, by asking the boy to cut the throat of the hen, and when the boy gets nervous and shown his unwillingness and unpreparedness, the Guru warns him that unless he showed his courage to kill a hen to begin with, how can he become bold and courageous to kill his enemy. The petitioner further alleged that in the background of this incident and in context of what precedes and succeeds this incident between the Guru and the boy, it is clear that Guru has instigated the boy to get into the trend of thought and feeling to be ready to commit violence against his enemies, in order to kill them, and on viewing the first part of the said serial as a whole this institution is to Hindu young boys to take to violence against Muslims. This is nothing but promoting feelings of enmity and hatred between Hindus and Muslims.

8. The petitioner further states that in the first serial the dialogue between the Hindu leaders and Muslim leaders is so arranged that Indian National Congress is suggested to be a Hindu organisation. In the present background, therefore, the petitioner claims that the exhibition of said

serial is likely to create communal disharmony.

9. "Tamas" had been give 'U' certificate by the Central Board of Film Censor. In this connection we may refer to the relevant provisions of the Cinematograph Act, 1952, which is an Act to make provision for the certification of cinematograph films for exhibition and regulating exhibitions by means of cinematograph. Section of the Act provides for Board of Film Censors. Section 4 of the Act provides for examination of films. A film is examined in the first instance by an Examining Committee under Section 4-A and, in certain circumstances, it is further examined by a Revising Committee under Section 5. Members of both the Committees are expected to set out not only their recommendations but also the reasons therefor in cases where there is difference of opinion amongst the members of the Committee. Section 5-A of the Act provides that if after examining a film or having it examined in the prescribed manner, the Board considers that the film is suitable for unrestricted public exhibition, such a certificate is given which is called 'U' certificate. Section 5-B of the Act provides for guidance in certifying films. The said Section 5-B provides as follows :

5. 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.

10. Section 5-C of the Cinematograph Act provides for the constitution of Appellate Tribunals, consisting of persons who are familiar with the social, cultural or political institutions of India, have special knowledge of the various regions of India and also special knowledge of films and their impact on society, to hear appeals from the orders of the Censor Board. Under Section 5-D, as it stands at present, the Tribunals can hear appeals by persons who, having applied for a certificate in respect of a film, are aggrieved by an order of the Board refusing to grant a certificate or granting a restricted certificate or directing the appellant to carry out certain excisions or modifications in the film. In addition, there is also an overall revisional power in the Central Government to call for the record of any proceeding in relation to any film at any stage, where it is not made the subject matter of appeal to the Appellate Tribunal, to enquire into the matter and make such order in relation thereto as it thinks fit, including a direction that the exhibition of the film should be suspended for a period not exceeding two months. Under the newly added sub-section (5) of Section 6, the Central Government has also been given revisional power in respect of a film certified by the Appellate Tribunal on the ground that it is necessary to pass an order in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or decency or morality.

11. Learned Additional Solicitor General, Shri Kuldeep Singh, for the Central Government, strongly urged before us that the film should be allowed to be exhibited. As a matter of fact in his enthusiasm, he submitted that there should be an order to the government to exhibit the film again and again. He urged that all the appropriate authorities have considered the film and Doordarshan authorities have also independently examined this question. It has to be borne in mind that there is

no allegation of any mala fide or bad motive on the part of the authorities concerned. The only question, therefore, is whether the film has been misjudged or wrongly judged and allowed to be exhibited or serialised in TV on a wrong approach. This film indubitably depicts violence. That violence between the communities took place before the pre-partition days is a fact and it is the truth. Dr. Chitale, however, submits that truth in its naked form may not always and in all circumstances be desirable to be told or exhibited.

12. During the course of the arguments before us on February 1, 1988 our attention was drawn to an item in the Hindustan Times of that day which contained an interview with the author Shri Bhisma Sahni. Strictly speaking such evidence is not admissible but since it is a matter of public interest, we have looked into it. The author has received the Sahitya Akademi award for this novel. It was written in 1974. The book is being taught in various universities. There has been no adverse reaction to the novel during the past fourteen years. The author further said "certain nuances which were, however, clear in the book are no so in the serial". The author has drawn attention to the incident that the mischief of getting a pig slaughtered and having it placed outside a mosque, was done by a character referred to as "Chaudhuri" in the film. In the novel his full name is mentioned as Murad Ali, which is obviously not a Hindu name, according to the author.

13. Vivian Bose, J. as he then was in the Nagpur High Court in the case of Bhagwati Charan Shukla v. Provincial Government (AIR 1947 Nag 1 : 226 IC 590 : 47 Cri LJ 994 : ILR 1946 Nag 865) has indicated the yardstick by which this question has to be judged. There at page 18 of the report the court observed 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. This in our opinion, is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".

14. This question came to be examined by this Court from a different angle in the case of K. A. Abbas v. Union of India ((1971) 2 SCR 446 : (1970) 2 SCC 780 : AIR 1971 SC 481). There K. A. Abbas the petitioner made a documentary film called "A Tale of Four Cities", which attempted to portray the contrast between the life of the rich and the poor in the four principal cities of the country. The film included certain shots of the red light district in Bombay. Although the petitioner applied to the Board of Film Censors for a "U" certificate for unrestricted exhibition of the film, he was granted a certificate only for exhibition restricted to adults. The petitioner then filed the writ petition in this Court. At the hearing of the petition the Central Government indicated that it had decided to grant a "U" certificate to the petitioner's film without the cuts previously ordered. Hidayatullah, C.J. has exhaustively dealt with the question and noted the statutory requirements. In that film there was a scanning shot of a very short duration, much blurred by the movement of the photographer's camera, in the words of Chief Justice, in which the red light district of Bombay was shown with the inmates of the brothels waiting at the doors or windows. Some of them wore abbreviated skirts showing bare legs up to the knees and sometimes a short way above them. This was objected to. The film was shown to the learned Judges in the presence of the lawyers. The learned Chief Justice at page 468 of the report addressed himself to the question : "How far can these restrictions go and how are these to be imposed". The court examined the provisions of Section 5-B(2) of the Act. After examining the relevant provisions and large number of authorities, the Chief Justice noted that the task of the censor was extremely delicate and its duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. Chief Justice at page 474 of the report observed as follows : (SCC p. 802, para 49)

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 censor's 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 Cressaid* (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 Nadir Shah 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.

15. Chief Justice observed that 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 relationship as banned in toto and forever from human thought and must give scope for talent to put them before society. In our scheme of things, the Chief Justice noted, ideas having redeeming social or artistic value must also have importance and protection for their growth.

16. Our attention was also drawn by Dr. Chitale to the decision of this Court in *Ebrahim Sulaiman Sait v. M. C. Mohammed* ((1980) 1 SCR 1148 : (1980) 1 SCC 398 : AIR 1980 SC 354), where Gupta, J. speaking for the court observed that truth was not an answer to a charge of corrupt practice under Section 123(3-A) of the said Act; what was relevant was whether the speech promoted or sought to promote feelings of enmity or hatred as mentioned in provision. But the likelihood must be judged from healthy and reasonable standards.

17. The question was again considered by this Court in *Raj Kapoor v. Laxman* ((1980) 2 SCR 512 : (1980) 2 SCC 175 : 1980 SCC (Cri) 383 : 1980 Cri LJ 436). This Court reiterated that the Penal Code is general and the Cinematograph Act, 1952 is special. The scheme of the Cinematograph Act is deliberately drawn up to meet the explosively expanding cinema menace if it were not strictly policed. No doubt, the cinema is a great instrument for public good if geared to social ends and can be a public curse if directed to anti-social objectives. The decision reiterated that a balance has to be struck. On the evidence available before this Court it appears that a balance has been struck.

18. Dr. Chitale emphasised that in an interview with the author, the author said that "Tamas" was not a historical novel. It merely takes into account certain events from history and builds upon them. He further said that life provided the raw material and a writer moulded it according to his imagination

and perception of reality.

19. We have given full thought to the contentions urged on behalf of the petitioner and come to the conclusion that these contentions cannot be accepted for two reasons. Firstly, as we have already pointed out, the Cinematograph Act itself contains several provisions to ensure the fulfilment of the conditions laid down in Section 5-B and to ensure that any film which is likely to offend the religious susceptibilities of the people are not screened for public exhibition. In the present case the Film Censor Board has approved the exhibition of the film. That apart we are informed that the Doordarshan authorities also scrutinise a film before it is exhibited on the television screen. Though we do not have the details of the authority or body which scrutinised the film for purposes of exhibition on the television, the procedure does involve further examination of the film from standards of public acceptability before it is shown on the television. It is true that the remedy of an approach to the Appellate Tribunal is available only to persons aggrieved by the refusal of the Board to grant a certificate or the cuts and modifications proposed by it. It is for the consideration of the Central Government whether the scope of this section should be expanded to permit appeals to the Tribunals even by persons who are aggrieved by the grant of certificate of exhibition to a film on the ground that the principles laid down for the grant of certificates in Section 5-B have not been fulfilled. But, even on the statute as it presently stands, the procedure for grant of certificate of exhibition to a film is quite elaborate and the unanimous approval by the Examining Committee must be given full weight. As pointed out by Krishna Iyer, J. in the Raj Kapoor case ((1980) 2 SCR 512 : (1980) 2 SCC 175 : 1980 SCC (Cri) 383 : 1980 Cri LJ 436), a court would be slow to interfere with the conclusion of a body specially constituted for this purpose.

20. Secondly, in this case we have the advantage of the views of two experienced Judges of one of the premier High Courts of this country. The learned Judges found that the message of the film was good. They have stated that the film shows how realisation ultimately dawns as to futility of violence and hatred, and how the inherent goodness in human nature triumphs. Dr. Chitale submitted that the Judges have viewed the film from their point of view but the average persons in the country are not as sober and experienced as Judges of the High Court. But the Judges of the High Court of Bombay have viewed it, as they said, from the point of view of "how the average person for whom the film is intended will view it" and the learned Judges have come to the conclusion that the average person will learn from the mistakes of the past and realise the machinations of the fundamentalists and will not perhaps commit those mistakes again. The learned Judges further observed that illiterates are not devoid of common sense, or unable to grasp the calumny of the fundamentalists and extremists when it is brought home to them in action on the screen. This is how they have viewed it : those who forget history are condemned to repeat it. It is out of the tragic experience of the past that we can fashion our present in a rational and reasonable manner and view our future with wisdom and care. Awareness in proper light is a first step towards that realisation. It is true that in certain circumstances truth has to be avoided. Tamas takes us to a historical past - unpleasant at times, but revealing and instructive. In those years which Tamas depicts a human tragedy of great dimension took place in this sub-continent - though 40 years ago - it has left a lasting damage to the Indian psyche. It has been said by Lord Morley in "On Compromise" that it makes all the difference in the world whether you put truth in the first place or in the second place. It is true that a writer or a preacher should cling to truth and right, if the very heavens fall. This is a universally accepted basis. Yet in practice, all schools alike are forced to admit the necessity of a measure of accommodation in the very interests of truth itself. Fanatic is a name of such ill-repute, exactly because one who deserves to be so called injures good causes by refusing timely and harmless concession; by irritating prejudices that a wiser way of urging his own opinion might have turned aside; by making no allowances, respecting no motives, and recognising

none of those qualifying principles that are nothing less than necessary to make his own principle true and fitting in a given society. Judged by all standards of a common man's point of view of presenting history with a lesson in this film, these boundaries appear to us could (sic to) have been kept in mind. This is also the lesson of history that naked truth in all times will not be beneficial but truth in its proper light indicating the evils and the consequences of those evils is instructive and that message is there in "Tamas" according to the views expressed by the two learned Judges of the High Court. They viewed it from an average, healthy and commonsense point of view. That is the yardstick. There cannot be any apprehension that it is likely to affect public order or it is likely to incite into (sic) the commission of any offence. On the other hand, it is more likely that it will prevent incitement to such offences in further by extremists and fundamentalists.

21. Dr. Chitale, relying strongly on certain observations in Abbas case ((1970) 2 SCR 446 : (1970) 2 SCC 780 : AIR 1970 SC 481) (at p. 459 of the report : SCC p. 791) contended that there was real danger of the film in this case inciting people to violence and to commit other offences arising out of communal disharmony. It is no doubt true that the motion picture is a powerful instrument with a much stronger impact on the visual and aural senses of the spectators than any other medium of communication; likewise, it is also true that the television, the range of which has vastly developed in our country in the past few years, now reaches out to the remotest corners of the country catering to the not so sophisticated, literary or educated masses of people living in distant villages. But the argument overlooks that the potency of the motion picture is as much for good as for evil. 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 deep 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. The attempt of the author in this film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate and foment conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection. It is possible only for a motion picture to convey such a message in depth and if it is able to do this, it will be an achievement of great social value. In the present case the finding of the learned Judges of Bombay High Court is that the picture viewed in its entirety, is capable of creating a lasting impression of this message of peace and co-existence and that people are not likely to be obsessed, overwhelmed or carried away by the scenes of violence or fanaticism shown in the film. We see no reason to differ from this conclusion.

22. Before we conclude we note that the petition was based on alleged violation of Articles 21 and 25 of the Constitution. We are unable to see any alleged violation of those articles. We, however, accept the position that the petitioner has a right to draw attention of this Court to ensure that the communal atmosphere is kept clean and unpolluted. He has done well to draw attention to this danger. We have examined and found that there is no such danger and the respondents have not acted improperly or imprudently.

23. In the aforesaid view of the matter this petition under Article 32 of the Constitution fails and is accordingly dismissed.

24. Similarly, on similar grounds the special leave petition arising out of the judgment and order of the Bombay High Court dated January 23, 1988 in Appeal No. 96/88 is also dismissed.

25. In the facts and circumstances of the case, there will be no order as to costs.

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