

S. Rangarajan

Vs

P. Jagjivan Ram and Others

Union of India and Others

Vs

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Civil Appeals Nos. 1668, 1669, 13667 and 13668 of 1988

(K. N. Singh, K. Jagannatha Shetty, Kuldip Singh JJ)

30.03.1989

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. These appeals by leave from the judgment of the Division Bench of the Madras Court revoking the 'U' Certificate' issued to a Tamil film called "Ore Oru Gramathile" (In One Village) for public exhibition. Civil Appeal Nos. 1668 and 1669 of 1988 are by the producer of the film and the Civil Appeal Nos. 13667 and 13668 of 1988 are by the Union of India.

2. The story of "One Oru Gramathile" can be summarised as follows :

A Brahmin widower, Shankara Sastry, has a talented daughter Gayathri. He apprehends that she would not be able to get admission to college because she belongs to a Brahmin community. He seeks advice from his close friend Devashyam, a Tahsildar. The Tahsildar who otherwise belongs to a very poor family and whose father was working in a local church responds with gratitude. He devises a method to help Gayathri because it was through Sastry's father that he got proper education and rose to become a Tahsildar. He prepares a false certificate showing Gayathri as Karuppayee belonging to an Adi Dravida community and as an orphan. He issues the certificate under the reservation policy of the government for the benefit of 'backward communities' identified on caste consideration. On the basis of the false certificate, Karuppayee gets admitted to college and enters I.A.S. Witness to this arrangement is the brother-in-law of Tahsildar called Anthony who later turns out to be a villain of the piece.

years later, Karuppayee, who was working in Delhi is sent to a rural village called Annavayil as a Special Officer for flood relief operations. Her father, Shankara Sastry happens to work in the same village as Block Development Officer. However, both of them pretend not to recognise each other. Karuppayee takes her work seriously and improves the living conditions of people to such an extent that she is held by them in high esteem. By a coincidence, after the death of the Tahsildar, Anthony comes to live in the same village and recognises Karuppayee. He starts blackmailing her and

threatens to reveal the fraudulent means by which she got the caste certificate. His attempt is to extract money from her frequently. One evening when he visits Karuppayee's house, he is confronted by Shankara Sastry who puts a halt to his blackmailing. Later Anthony dies of sudden heart attack but not before he informs the government about the facts relating to Karuppayee. Upon preliminary enquiry, the government suspends both Karuppayee and her father and eventually they are put on trial in the court. The people of the village resentful of the action taken against Karuppayee rise as one man and demonstrate before the court in a peaceful manner for her release. They also send petitions to the government.

Karuppayee and her father admit in the court the fact of their having obtained the false certificate but they attribute it to circumstances resulting by government reservation policy on caste basis. They say that they are prepared to undergo any punishment. They contend that some politicians are exploiting the caste consideration and that would be detrimental to national integration. They also argue that the reservation policy should not be based on caste, but called be on economic backwardness. Just about the time when the judgment is to be pronounced the court receives intimation from government that in the light of petitions received from the public, the case against Karuppayee and her father stands withdrawn. Karuppayee goes back to her government job with jubilant people all round.

3. This is the theme of the picture presented. As usual, it contains some songs, dance and side attractions to make the film more delectable.

4. On August 7, 1987, the producer applied for certificate for exhibition of the film. The examining committee upon seeing the film unanimously refused to grant certificate. The appellant then sought for review by a Revising Committee which consisted of nine members. This Committee reviewed the film. Eight members were in favour of grant of certificate and one was opposed to it. The Chairman of the Censor Board however, referred the film to Second Revising Committee for review and recommendation. This again consisted of nine members and by majority of 5 : 4 they recommended for issue of 'U' Certificate subject to deletion of certain scenes. The 'U' certificate means for unrestricted public exhibition as against 'A' certificate restricted to adult only. The minority expressed the view that the film is treated (sic) in an irresponsible manner. The reservation policy of the government is provided in a highly biased and distorted fashion. They have also stated that the so called appeal in the film "India is One" is a hollow appeal, which in effect touches caste sensitivity of the Brahmin forward caste. One of the members felt that the impact of the film will create Law and order problem. Another member said that the film will hurt the feelings and sentiments of certain sections of the public. But the majority opined that the theme of the film is on the reservation policy of the government suggesting that the reservation could be made on the basis of economic backwardness. Such a view could be expressed in a free country like India, and it did not violate any guideline.

5. On December 7, 1987, 'U' certificate was granted for the exhibition of the film which was challenged before the High Court by way of writ petitions. The writ petitions were dismissed by the Single Judge, but the Division Bench upon appeal allowed the writ petitions and revoked the certificate. The Division Bench Largely depended upon the majority view of the Second Revising Committee and also the opinion of the Examining Committee. The producer of the film and the Government of India by obtaining leave have appealed to this Court. The film has since been given National Award by the Directorate of Film Festival of the Government of India.

6. In these appeals the fundamental point made by Mr. Soli Sorabjee, learned counsel for the

producer is about the freedom of free expression guaranteed under our Constitution even for the medium of movies. The counsel argued that the opinion on the effect of the film should not be rested on isolated passages disregarding the main theme and its message. The film should be judged in its entirety from the point of its overall impact on the public. The writings of the film must be considered in a free, fair and liberal spirit in the light of the freedom of expression guaranteed under our Constitution. The counsel said that the court is not concerned with the correctness or legality of the views expressed in the film and the court cannot limit the expression on any general issue even if it is controversial. Mr. Mahajan for the Union of India supported these submission. Mr. Varghese learned counsel for the contesting respondents did not dispute most of the propositions advanced for the appellants. He was, however, critical about the manner in which the reservation policy of the government has been condemned and the events and characters shown in the film. He contended that they are depicted in a biased manner and reaction to the film in Tamil Nadu is bound to be volatile.

7. Before examining these rival contentions, a few general observations may be made as to the utility of movies and the object of the Film Censors Board. The motion pictures originally considered as form of amusement to be allowed to titillate but not to arouse. They were treated as mere entertainment and not an art or a means of expression. This theory was based on the concept that motion picture was a business "pure and simple originated and conducted for profit, like other spectacles". It was considered strictly as an "amusement industry". It was so held in 1915 by the unanimous decision of the American Supreme Court in *Mutual Film Corporation v. Industrial Commission* (236 US 230 (1915)). It was not without significance since there were no talking pictures then. The talking pictures were first produced in 1926, eleven years after the *Mutual* (236 US 230 (1915)) decision (Encyclopedia Britannica, 1965, Vol. 15, p. 902). The later decisions of the American Supreme Court have therefore declared that expression by means of motion pictures is included within the free speech and free press guarantee of the First Amendment to the U.S. Constitution provides : "Congress shall make no law ... abridging the freedom of speech, or of the press." This amendment is absolute in terms and it contains no exception for the exercises of the right. Heavy burden lies on the State to justify the interference. The judicial decisions, however, limited the scope of restriction which the State could imposed in any given circumstances. The danger ruler was born in *Schenck v. United States* (249 US 47 : 63 L ED 470 (1919)). Justice Holmes for a unanimous court, evolved the test of "clear and present danger." He used the danger test to determination where discussion ends and incitement or attempt begins. The core of his position was that the First Amendment protects only utterances that seeks acceptances via the democratic process of discussion and agreement. But "Words that may have all effect of force" calculated to achieve its goal by circumventing the democratic process are however, not so protected.

8. The framework of our Constitution differs from the First Amendment to the U.S. Constitution. Article 19(1)(a) of our Constitution guarantees to all citizens the right to freedom of speech and expression. The freedom of expression means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and the right to propagate or publish opinion. The communication of ideas could be made through any medium, newspaper, newspaper, magazine or movie. But this right is subject to reasonable restrictions on ground set out under Article 19(2) of the Constitution. The reasonable limitations can be put in the interest of 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. The Framers deemed it essential to permit imposition of reasonable restrictions in the larger interest of the community and country. They intended to

strike a proper balance between the liberty guaranteed and the social interest specified under Article 19(2). (See Santokh Singh v. Delhi Administration ((1973) 1 SCC 659 : 1973 SCC (Cri) 577 : (1973) 3 SCR 533).)

9. This is the difference between the First Amendment to the U.S. Constitution and Article 19(1)(a) of our Constitution. The decisions bearing on the First Amendment are, therefore, not useful to us except the broad principles and the purpose of the guarantee.

10. Movie doubtless enjoys the guarantee under Article 19 (1)(a) but there is one significant difference between the movie and other modes of communication. The movie cannot function in a free market-place like the newspaper, magazine or advertisement. Movie motivates thought and action and assures a high degree of attention and retention. It makes its impact simultaneously arousing the visual and aural senses. The focusing of an intense light on a screen with the dramatizing of facts and opinion makes the ideas more effective. The combination of act, speech, sight and sound in semi-darkness of the theatre with elimination of all distracting ideas will have an impact in the minds of spectators. In some cases, it will have a complete and immediate influence on, and appeal for everyone who sees it. In view of the scientific improvements in photography and production the present movie is a powerful means of communication. It is said : "as an instrument of education it has unusual power to impart information, to influence specific attitudes towards objects of social value, to affect emotions either in gross or in microscopic proportions, to affect health in a minor degree through sleep disturbance, and to affect profoundly the patterns of conduct of children". (See Reader in Public Opinion and Communication, Second Edition by Bernard Berelson and Morris Janowitz, p. 390.) The authors of this book have demonstrated (at pp. 391 to 401) by scientific tests the potential of the motion pictures in formation of opinion by spectators and also on their attitudes. These tests have also shown that the effect of motion pictures is cumulative. It is proved that even though one movie relating to a social issue may not significantly affect the attitude of an individual or group, continual exposure to films of a similar character will produce a change. It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instil or cultivate violent or good behaviour. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free marketplace just as do the newspapers or magazines. Censorship by prior restraint is, therefore, not only desirable but also necessary.

11. Here again we find the difference between the First Amendment to the U.S. Constitution and Article 19(1)(a) of our Constitution. The First Amendment does not permit any prior restraint, since the guarantee of free speech is in unqualified terms. This essential difference was recognised by Douglas, J., with whom Black, J., concurred in *Kingsley Corporation v. Regents of the University of the New York* (3 L Ed 1512, 1522). In holding that censorship by "prior restraint" on movies was unconstitutional, the learned Judge said :

If we had a provision in our Constitution for "reasonable" regulation of the press such as India has included in hers, there would be room for argument that censorship in the interests of morality would be permissible. Judges sometimes try to read the word "reasonable" into the First Amendment or make the rights it grants subject to reasonable regulation But its language, in terms that are absolute is utterly at war with censorship. Different questions may arise as to censorship of some news when the nation is actually at war. But any possible exceptions are extremely limited.

12. The Cinematograph Act, 1952 ("the Act") which permits censorship on movies is a comprehensive enactment. Section 3 of the Act provides for constitution of Board of Film Censors. Section 4 speaks of examination of films. A film is examined in the first instance by an Examining Committee. If it is not approved, it is further reviewed by a Revising Committee under Section 5. Section 5-A states 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.

13. Section 5-B provides principles for guidance in certifying films. It is significant to note that Article 19(2) has been practically read into Section 5-B(1). Section 5-C confers right of appeal to Tribunal against refusal of certificate. Under Section 6, the Central Government has revisional power 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.

14. Under Section 8 of the Act, the Rules called the Cinematograph (Certification) Rules, 1983 have been framed. Under Section 5-B(2) the Central Government has prescribed certain guidelines for the Censors Board. Guideline (1) relates to the objectives of film censorship. The Board shall ensure that : (a) the medium of film remains responsible and sensitive to the values and standards of society; (b) artistic expression and creative freedom are not unduly curbed and (c) censorship is responsible to social change.

15. Guideline (2) requires the Board to ensure that : (i) anti-social activities such as violence are not glorified or justified; (ii) the modus operandi of criminal or other visuals or words likely to incite the commission of any offence are not depicted; (iii) pointless or avoidable sense of violence, cruelty and horror are not shown; (iv) human sensibilities are not offended by vulgarity, obscenity and depravity; (v) the sovereignty and integrity of India is not called in question; (vi) the security of the State is not jeopardised or endangered; (viii) friendly relations with foreign states are not strained; and (ix) public order is not endangered.

16. Guideline (3) also requires the Board to ensure that the film : (i) is judged in its entirety from the point of view of its overall impact; and (ii) is examined in the light of contemporary standards of the country and the people to whom the film relates.

17. It will be thus seen that censorship is permitted mainly on social interests specified under Article 19(2) of the Constitution with emphasis on maintenance of values and standards of society. Therefore, the censorship by prior restraint must necessarily be reasonable that could be saved by the well accepted principles of judicial review.

18. In *K. A. Abbas v. Union of India* ((1970) 2 SCC 780 : (1971) 2 SCR 446) a Constitution Bench of this Court considered important questions relating to pre-censorship of cinematograph films in relation to the fundamental right of freedom of speech and expression. K. A. Abbas, a noted Indian journalist and film producer produced a short documentary film called "A Tale of Four Cities". In that film he sought to contrast the self-indulgent life of the rich in metropolitan cities with the squalor and destitution of labouring masses who helped to construct the imposing buildings and complexes utilised by the rich. The film also goes on to explore the theme of exploitation of women by men, dealing in particular with prostitution. Abbas applied to the Board of Film Censors for a 'U' certificate, permitting unrestricted exhibition of the film. He was informed by the regional officer that the Examining Committee had provisionally concluded the film should be restricted to adults. The Revising Committee concurred in this result, whereupon Abbas, after exchanging

correspondence with the Board, appealed to Central Government. The government decided to grant 'U' certificate provided that the scenes in the red light district were deleted from the film. Abbas challenged the action of the Board mainly on for issues out of which two did not survive when the Solicitor General stated before the court that the government set on foot legislation to effectuate the policies at the earliest possible date. The two issues which survived thereupon were : (a) that pre-censorship itself cannot be tolerated under the freedom of speech and expression; (b) that even if it were a legitimate restraint on the freedom, it must be exercised on very definite principles which leave no room for arbitrary action.

19. With regard to the power of pre-censorship, Hidayatullah, C.J., observed : (SCC p. 802, para 49 : SCR pp. 473-74)

The task of the censor is extremely delicate The standards that we set out for our censors must be 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 it deal form and the line is to be drawn were the average 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.

20. Recently, Sabyasachi Mukharji, J., in *Ramesh v. Union of India* ((1988) 1 SCC 668 : 1988 SCC (Cri) 266) which is popularly called "Tamas" case laid down the standard of judging the effect of the words or expression used in the movie. The learned Judge quoting with approval of the observation of Vivian Bose, J., as he then was, in the Nagpur High Court in the case of *Bagwati Charan Shukla v. Provincial Government* (AIR 1947 Nag 1 : 47 Cri LJ 994) said : (SCC p. 676, para 13)

..... That the effect of the words must be judged form 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 is 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 Clampham omnibus".

21. We affirm and reiterate this principle. The standards to be applied by the Board or courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man. We, however, wish to add a word more. The Censors Board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country. The moral values in particular, should not be allowed to be sacrificed in the guise of social change or cultural assimilation. Our country has had the distinction of giving birth to a galaxy of great sages and thinkers. The great thinkers and sages through their life and conduct provided principles for people to follow the path of right conduct. There have been continuous efforts at rediscovery and reiteration of those principles. Adi-guru Shankaracharya, Ramanujacharya, Madhwacharya, Chaitanya Maha Prabhu, Swami Ram Krishan Paramhansa, Guru Nanak, Sant Kabir and Mahatma Gandhi, have all enlightened our path. If one prefers to go yet further back, he will find "Tirukkural" the ethical code from Tiruvalluvar teaching

which is "a general human morality and wisdom". Besides, we have the concept of "Dharam" (righteousness in every respect) a unique contribution of India civilization to humanity of the world. These are the bedrock of our civilization and should not be allowed to be shaken by unethical standards. We do not, however, mean that the censors should have an orthodox or conservative outlook. Far from it, they must be responsive to social change and they must go with the current climate. All we wish to state is that the censors may display more sensitivity to movies which will have a markedly deleterious effect to lower the moral standards of those who see it. Krishna Iyer, J., in *Raj Kapoor v. Laxman* ((1980) 2 SCC 175 : 1980 SCC (Cri) 383 : (1980) 2 SCR 512) in words meaningful expressed similar thought. The learned Judge said : (SCC p. 180, para 10, SCR p. 517)

The ultimate censorious power over the censors belongs to the people and by indifference, laxity or abetment, pictures which pollute public morals are liberally certificated; the legislation, meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within.

22. With these prefatory remarks, let us now turn to the reasons which weighed with the High Court of revoke the 'U' certificate and rule out the film altogether. The High Court has found fault with the constitution of the First Revising Committee. It has held that the Revising Committee was constituted hurriedly and its constitution by "delegate Board Member" was illegal and without authority of law. The Committee also showed unusual favour to the producer by reviewing the film with not (sic) haste. In the absence of a First Revision Community having come into existence as known to law, the High Court said that the constitution of the Second Revising Committee was invalid and inoperative.

23. We do not think that the High Court was justified in reaching this conclusion. Under the rules, the Regional Officer shall appoint an Examining Committee to examine the film. The reports and records relating thereto shall be treated as confidential. Rule 22 inter alia, states that after screening the film, the Examining Officer within three working days send the recommendations of all the members of the Examining Committee to the Chairman. Rule 24(1) provides for constitution of a Revising Committee. It states that on receipt of the record referred to in Rule 22, the Chairman may, of his motion or on the request of the applicant, refer the movie to a Revising Committee. In the instant case, the Chairman did not constitute the First Revising Committee but a Member of the Board did. The question is whether the member of the Board was competent to constitute the Revising Committee. Our attention was drawn to the government order dated January 21, 1987 made under Section 7-B of the Cinematograph Act. The order reads :

No. 803/1/86-F(C) Government of India Ministry of Human Resource
Development Department of Culture New Delhi, January 21, 1987 ORDER##

In exercise of the powers conferred by Section 7-B of the Cinematograph Act, 1952 (37 of 1952) (hereinafter referred to as the said Act), the Central Government hereby directs that any power, authority or jurisdiction exercisable by the Board of Film Certification (hereinafter referred to as the Board) in relation to matters specified in Section 4, sub-sections (3) and (4) of Section 5, Section 5-A and Section 7-C of the said Act shall also be exercisable subject to the condition given below by the following members of the Board at the Regional Office indicated against each, with immediate effect and until further orders :

1. Shri. Samik Banerjee, Calcutta
2. Ms. Maithreyi Ramadhurai, Madras

3. Dr. B. K. Chandrashekar, Bangalore

* *

This order clearly states that the power of the Board shall also be exercisable by the specified members within their regional office. For Madras region Ms. Maithreyi Ramadhurai has been constituted to exercise such powers.

24. It cannot be contended that the Central Government has not power to delegate the powers of to issue the said order. Section 7-B empowers the Central Government to issue general or special order directing that any power, authority or jurisdiction exercisable by the Board under the Act shall be exercisable also by the Chairman or any other member of the Board. The section further provides that anything done or action taken by the Chairman or other members specified in the order shall be deemed to be a thing done or action taken by the Board. From the provisions of Section 7-B read with the government order dated January 21, 1987, it becomes clear that the constitution of the First Revising Committee by the member at the Madras Regional Office is not vulnerable to any attack. It is legally justified and unassailable. The conclusion to the contrary reached by the High Court is apparently unwarranted.

25. We also do not find any justification for the observation of the High Court that there was unusual favour shown to the producer by the First Revising Committee in reviewing the film. It is true that the film was revised within 23 hours of the presentation of the application. But there is no reason to attribute motives either to members of the Committee or to the producer. In matters of certification of films, it is necessary to take prompt action by the respective authorities. The producer who has invested a large capital should not be made to wait needlessly. He has a statutory right to have the validity of the film determined in accordance with law. It would be, therefore, proper and indeed appreciative if the film is reviewed as soon as it is submitted.

26. There are two other side issues which may be disposed of at this stage. The scene with song No. 2 in reel No. 3 and the comments by the heroine on looking at the photo of Dr. Ambedkar have come under serious criticism. It is said that the song has the effect of spreading 'kulachar' which is 'poisonous message' to the depressed classes not to educate their children. The complaint, if true, is serious. We, therefore, gave our anxious consideration to the grievance. We, as did the High Court, viewed the movie. The cobbler sings the song in question with his grandson who is eager to go to school. The song contains references to Kamaraj, Anna and MGR who without even college education became Chief Minister. The cobbler asks the grandson : "What are you going to achieve by education ? and don't forsake the profession you know and you can educate yourself as a cobbler." While these and other exchanges are going on between the cobbler and grandson, the heroine comes and insists that the boy should go to school. She promises to contribute Rs. 50 as an incentive to the cobbler every month also to make good his income deprived of by the boy's earning. They agree to her suggestion with "Vanakkam, Vanakkam". The song thus ends a happy note and the cobbler agrees to send his grandson to school. It is true as pointed out by counsel for the respondents that one or two reference in the song are not palatable, but we should not read too much into that writing. It is not proper to form an opinion by dwelling upon stray sentences or isolated passages disregarding the main theme. What is significant to note is that the cobbler ultimately does not insist that his grandson should continue the family pursuits. He accepts the suggestion made by the heroine. It is, therefore, wrong to conclude that the song was intended to convey poisonous message against the interests of depressed classes.

27. The criticism on the alleged comments on Dr. Ambedkar is equally unsustainable. The confusion perhaps is due to the pronounced accent of an English word in the course of Tamil conversion. The matter arises in this way : Sastry shows the photograph of Dr. Ambedkar to heroine and enquires whether she likes it. Then she makes certain comments. According to the High Court, she states : "Dr. Ambedkar worked for the poor. Not for 'par'." It is said that 'par' in Tamil means equality and if she says 'not for the par', it means that Dr. Ambedkar did not work for equality. If she states like that, it is certainly objectionable since Dr. Ambedkar did everything to have an egalitarian society. But while viewing the film, we could not hear any such word used by the heroine. On the other hand, we distinctly noted her saying. "Dr. Ambedkar worked for the poor. Not for power". This being the remark there is no basis for the criticism of the High Court.

28. The last complaint and really the nub of the case of the respondent is about the reel No. 14 covering the court scene where Karuppayee and Sastry are prosecuted for offence of obtaining a false caste certificate. The reel No. 14 contains almost a dialogue between the prosecution lawyer and Karuppayee. She criticises the reservation policy of the government. She states that during the British regime, the people enjoyed educational freedom, and job opportunities which were based on merit criteria and not vote cast in a particular constituency. Then the prosecution lawyer puts a question "Why do you regret this Madam ? Was not 'Bharat Matha' under shackles then ?" She replies : "You are right. Then 'Bharat Matha' was in chains (vilangu, is the Tamil word used for shackles which also means animals). Now 'Bharat Matha' is under animals' hands". On a further question from the prosecutor she explains that her reference to 'animals' hands' is only to those who incite caste, language and communal fanaticism, thus confusing people and making it whit profession. She also states that it is the government and its laws that have made her father to tell a lie. The presiding Judge interrupts with a question : "What is wrong in the government approach ? Can you elaborate ?" She replies : "That it is wrong not to give credence to her merit and evaluate the same on the basis of her caste and such evaluation would put a bar on the progress. "She goes on to explain : "Your laws are the barriers, Sir. You have made propaganda in nook and corner stating "Be an Indian, Be an Indian'. And if I proudly say I am an Indian then the government divides saying 'no, no, no, You are a Brahmin, you are a Christian, you are a Muslim. It is the government that divides." Then she puts a question to herself : "What is the meaning of "Be an Indian' ?" She explains that it must be without caste, creed and communal considerations, from Kashmir to Kanyakumari, the country must be one. She then blames the government with these words : "The government in dealing with all has no one face. Take any application form they want to know your caste and religion. When all are Indians where is the necessity for this question. You have divided the people according to caste. Then if you reel off on "National integration" will not the public laugh."

29. As to the reservation policy to those who are backward she says : "On God's name, I have no objection in providing all concession to those who are backward. The list of those belonging to forward sections and backward sections could be prepared on the basis of economic considerations. And those below a specified limit of income be included in the backward list."

30. How did the High Court look at it ? On the remark of heroine as to the situations that existed during British administration, the High Court observed thus :

It is preposterous and offensive to claim that education was independent when India was under British rule and that, after independence it is not there.

31. The High Court also said :

That any denigration of Rule of law would never bring orderly society. To preach that it is only law that prompted them to utter falsehood and in its absence they would not done it is a wrong way presenting a viewpoint.

32. As to the allegations that 'Bharat Matha' is now in the hands of politicians, who are instigating the masses on the basis of caste and language, etc., the High Court remarked :

If this sort decrying India for being an independent nation is to be projected in films repeatedly, then in course of time, citizens will lost faith in the integrity and sovereignty of India. With this sort of glorification made, how could it be claimed that the film stands for national integration. That was why one member rightly said that it is a hollow claim. Hence guideline 2(vi) and (vii) are contravened.

33. On the total impact of the film, the High Court observed :

That certain peculiar factors will have to be taken into account because of guideline 3 (i) and (ii). This film is in Tamil. It deals with reservations now extended to large sections of people on a particular basis, and who have suffered for centuries, and at a time when they have not attained equality and when their valuable rights which are secured under the Constitution is attempted to be taken away, they get agitated. This film taken in Tamil for Tamil population on being screened in Tamil Nadu, will certainly be viewed in the background of what had happened in Tamil Nadu during the preceding four decades, and the reactions are bound to be volatile.

34. We find it difficult to appreciate the observations of the High Court. We fail to understand how the expression in the film with criticism of reservation policy or praising the colonial rule will affect the security of the State or sovereignty and integrity of India. There is no utterance in the film threatening to overthrow the government by unlawful or unconstitutional means. There is no talk for succession either. Nor there is any suggestion for impairing the integration of the country. All that the film seems to suggest is that the existing method of reservation on the basis of caste is bad and reservation on the basis of economic backwardness is better. The film also deprecates exploitation of people on caste considerations. This is the range and rigour of the film.

35. The High Court, however, was of opinion that public reaction to the film, which seeks to change the system of reservation is bound to be volatile. The High Court has also stated that people of Tamil Nadu who have suffered for centuries will not allow themselves to be deprived of the benefits extended to them on a particular basis. It seems to us 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. Freedom of expression is the rule and it is generally taken for granted. Everyone has a fundamental right to form his own opinion on any issue of general concern. He can form and inform by any legitimate means.

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

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

37. In *Maneka Gandhi v. Union of India* ((1978) 1 SCC 248 : (1978) 2 SCR 621) Bhagwati, J., observed : (SCC pp. 305-06, para 29 : SCR p. 696)

Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic setup. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.

38. The learned Judge in *Naraindas Indurkha v. State of Madhya Pradesh* ((1974) 4 SCC 788 : 1974 SCC (Cri) 727 : (1974) 3 SCR 624) while dealing with the power of the State of select text books for obligatory use by students said : (SCC p. 816, para 23 : SCR p. 650)

It is our firm belief, nay, a conviction which constitutes one of the basic values of a free society to which we are wedded under our Constitution, that there must be freedom not only for the thought that we cherish, but also for the thought that we hate. As pointed out by Mr. Justice Holmes in *Abramson v. United States* (250 US 616) "the ultimate good desired is better reached by free trade in ideas - the best test of truth is the power of the thought to get itself accepted in the competition of the market." There must be freedom of thought and the mind must be ready to receive new ideas, to critically analyse and examine them and to accept those which are found to stand the test of scrutiny and to reject the rest.

39. In *Sakal Papers (P) Ltd. v. Union of India* ((1962) 3 SCR 842, 866 : AIR 1962 SC 305), Mudholkar, J. said :

..... The courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislature and government and must be preserved.

40. Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of. But he has a right to "think out" and put the counter-appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however hateful to its policies. As Professor Freund puts it : "The State may not punish open talk, however hateful, not for the hypocritical reason that Hyde Parks are a safety valve, but because a bit of sense may be salvaged from the odious by minds striving to be rational, and this precious bit will enter into the amalgam which we forge.

41. "When men differ in opinion, both sides ought equally to have the advantage of being heard by the public." (Benjamin Franklin). If one is allowed to say that policy of the government is good, another is with equal freedom entitled to say that it is bad. If one is allowed to support the government scheme, the other could as well say, that he will not support it. The different views are allowed to be expressed by proponents and opponents not because they are correct, or valid but

because there is freedom in this country for expressing even differing view on any issue.

42. Alexander Meiklejohn perhaps the foremost American philosopher of freedom of expression, in his wise little study neatly explains :

When men govern themselves, it is they - and no one else - who must pass judgment upon unwisdom and unfairness and danger. And that means that unwise ideas must have a hearing as well as wise ones, unfair as well as fair, dangerous as well as safe, unamerican as well American If then, on any occasion in the United States it is allowable, in that situation, to say that the Constitution is a good document it is equality allowable, in that situation, to say that the Constitution is a bad document. If a public building may be used in which to say, in time of war, that the war is justified, then the same building may be used in which to say that it is not justified. If it be publicly argued that conscription for armed service is moral and necessary, it may likewise be publicly argued that it is immoral and unnecessary. It may be said that American political institutions are superior to those of England or Russia or Germany it may with equal freedom, be said that those of England or Russia or Germany are superior to ours. These conflicting views may be expressed, must be expressed, not because they are valid, but because they are relevant To be afraid of ideas, any idea, is to be unfit for self-government." [Political Freedom (1960) at 27].

He argued, if we may say so correctly, that the guarantees of freedom of speech and of the press are measures adopted by the people as the ultimate rulers in order to retain control over the government, the people's legislative and executive agents.

43. Brandies, J., in *Whitney v. California* (274 US 357, 375-78 (1927) : 71 L Ed 1045) propounded probably the most attractive free speech theory :

..... that the greatest menace to freedom is an inert people; that public discussion is a political duty, It is hazardous to discourage thought, hope and imagination; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy of evil counsels is good ones.

44. What Archibald Cox said in his article though on First Amendment is equally relevant here :

Some propositions seem true or false beyond rational debate. Some false and harmful, political and religious doctrine gain wide public acceptance. Adolf Hitler's brutal theory of a 'master race' is sufficient example. We tolerate such foolish and sometimes dangerous appeals not because they may prove true but because freedom of speech is indivisible. The liberty cannot be denied to some ideas and saved for others. The reason is plain enough : no man, no committee, and surely no government, has the infinite wisdom and disinterestedness accurately and unselfishly to separate what is true from what is debatable, and both from what is false. To license one to impose his truth upon dissenters is to give the same licence to all others who have, but fear to lose, power. The judgment that the risks of suppression are greater than the harm done by bad ideas rests upon faith in the ultimate good sense and decency of free people (*Society* Vol. 24, p. 8, No. 1 November/December, 1986).

45. The problem of defining the area of freedom of expression when it appears to conflict with the

various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

46. Our remarkable faith in the freedom of speech and expression could be seen even from decisions earlier to our Constitution. In *Kamal Krishna Sircar v. Emperor* (AIR 1935 Cal 636 : 36 Cri LJ 1370), the Calcutta High Court considered the effects of a speech advocating a change of government. There the accused was convicted under Section 124-A of Penal Code of making a speech recommending 'Bolshevik' form of government to replace the then existing form of government in Calcutta. While setting aside the conviction and acquitting the accused, Lord Williams, J., who delivered the judgment observed : (AIR p. 637)

..... All that the speaker did was to encourage the youngmen, who, he was addressing, to join the Bengal Youth League and to carry on a propaganda for the purpose of inducing as large a number of people in India as possible to become supporters of the idea of communism as represented by the present Bolshevik system in Russia.

It is really absurd to say that speeches of this kind amount to sedition. If such were the case, then every argument against the present form of government and in favour of some other form of government might be alleged to lead to hatred of the government and it might be suggested that such ideas brought the government into contempt. To suggest some other form of government is not necessarily to bring the present government into hatred or contempt.

47. To the same effect is the observation by the Bombay High Court in *Manohar Damodar Patil v. Government of Bombay* (AIR 1950 Bom 210 : 51 Cri LJ 829 : 52 Bom LR 275). There the writer of an article in a newspaper was convicted for an offence under the Press (Emergency Powers) Act, 1931, for incitement to violence. The writer had suggested the people to follow the example of China by rising against Anglo-American Imperialism and their agents. He had also suggested his readers to pursue the path of violence as the Chinese people did, in order that Anglo-American Imperialism should be driven out of this county. Chagla, C.J. while quashing the conviction said : (AIR p. 213)

It is true that the article does state that the working class and the toiling masses can be hold of power through the path of revolution alone. But the expression "revolution" is used here, as is clear from the context, in contradistinction to reformism or gradual evolution. The revolution preached is not necessarily a violent revolution As the writer has not stated in this article that the toiling masses should take up arms and fight for their rights and thus achieve a revolution we refuse to read this expression as inciting the masses to violent methods.

48. In *Niharendu Dutt Majumdar v. Emperor* (AIR 1942 FC 22 : 43 Cri LJ 504 : 46 CWN 9), the Federal Court examined the effects of a vulgar and abusive outburst against the government made by the accused for which he was convicted under Rule 34 of the Defence of India Rules. Gwyer, C. J., while acquitting the person commented more boldly : (AIR p. 27)

There is an English saying that hard words bread no bones; and the wisdom of the common law has long refused to regard as actionable any words which, though strictly and liberally defamatory, would be regarded by all reasonable men as no more than mere vulgar abuse.

* *

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 of the time being established by law in Bengal or elsewhere in India. That the appellant expressed his opinion about that system of government is true, but he was entitled to do so; and his reference to it were, we might almost say, both commonplace and in common form, and unlikely to cause any government in India a moment's uneasiness. His more violent outbursts were directed against the then Ministry in Bengal and against the Governor in Bengal in his political capacity but we do not feel able to say that his speech whatever may be thought of the form in which it was expressed, exceeded the legal limits of comment or criticism.

49. Even the European Court's approach in protecting the freedom of expression is not different although they have the extensive list of circumstances for limiting the freedom. Article 10 of the European Convention of Human Rights and Fundamental Freedom provides :

(1) Everyone has the right to freedom of expression.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in democratic society in the interests of national security, territorial integrity or public safety, for the prevention of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

It appears that the second paragraph of Article 10 virtually removes the right purportedly guaranteed by the first paragraph. However, the European Court in *Handyside v. United Kingdom* (1976 EHRR 737) observed : (EHRR p. 754)

The court's supervisory functions oblige it to pay the utmost attention to the principles characterising a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued.

50. This takes us to the validity of the plea put forward by the Tamil Nadu Government. In the affidavit filed on behalf of the State Government, it is alleged that some organisations like the Tamil Nadu Scheduled Castes/Scheduled Tribes People's Protection Committee, Dr. Ambedkar People's Movement, the Republican Party of India have been agitating that the film should be banned as it

hurt the sentiments of people belonging to Scheduled Castes/Scheduled Tribes. It is stated that General Secretary of the Republican Party of India has warned that his party would not hesitate to damage the cinema theatres which screen the film. Some demonstration made by people in front of "The Hindu" office on March 16, 1988 and their arrest and release on bail are also referred to. It is further alleged that there were some group meetings by Republican Party members and Dr. Ambedkar People's Movement with their demand for banning the film. With these averments it was contended for the State that the exhibition of the film will create very serious law and order problem in the State.

51. We are amused yet troubled by the stand taken by the State Government with regard to the film which has received the National award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.

52. In this case, two Revising Committees have approved the film. The members thereof come from different walks of life with variegated experiences. They represent the cross-section of the community. They have judged the film in the light of the objectives of the Act and the guidelines provided for the purpose. We do not think that there is anything wrong or contrary to the Constitution in approving the film for public exhibition. The producer or as a matter of fact any other person has a right to draw attention of the government and people that the existing method of reservation in educational institutions overlooks merits. He has a right to state that reservation could be made on the basis of economic backwardness to the benefit of all sections of community. Whether this view is right or wrong is another matter altogether and at any rate we are not concerned with its correctness or usefulness to the people. We are only concerned whether such a view could be advocated in a film. To say that one should not be permitted to advocate that view goes against the first principle of our democracy.

53. We end here as we began on this topic. 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 quickened 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.

54. In the result, we allow these appeals, reverse the judgment of the High Court and dismiss the writ petitions of the respondents. In the circumstances of the case, however, we make no order as to costs.

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