

**F.No. 2/15/2015(Part II)-FCAT**

**BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL**

5<sup>th</sup> March, 2018

**Present: CHIEF JUSTICE(RETD.) MANMOHAN SARIN,  
CHAIRPERSON, FCAT  
MS. POONAM DHILLON, MEMBER, FCAT  
MS. SHAZIA ILMI, MEMBER, FCAT**

**FOR THE APPELLANT: SHRI MAYANK PANDEY, ADVOCATE  
SHRI DHRUV SOOD, ADVOCATE**

**FOR THE RESPONDENT: NEMO**

**IN THE MATTER OF:**

**MANU KUMARAN ..... APPELLANT**

**VERSUS**

**CENTRAL BOARD OF FILM ..... RESPONDENT  
CERTIFICATION(CBFC)**

**APPEAL UNDER SECTION 5C OF THE CINEMATOGRAPH ACT, 1952 (37 OF 1952) AGAINST THE DECISION OF CENTRAL BOARD OF FILM CERTIFICATION (CBFC) IN RESPECT OF HINDI FILM "BATTLE FOR BANARAS".**

**ORDER**

This Tribunal by order dated 4<sup>th</sup> April, 2016 passed in appeal no. 2/15/2015-FCAT affirmed order dated 16<sup>th</sup> October, 2015 of the CBFC, refusing certification to the film 'Battle for Banaras' produced by the

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Appellant. The Board had refused certification giving the following reasons for refusal :-

"The theme is full of hate speeches/inflammatory speeches, given by all the leaders falls on different caste, communal talks, derogatory remarks and of release, may cause communal disharmony unrest and disturbance. Hence, refused for certification under guidelines section 2(xii), (xvii), (xiii), (xviii) and 3(i)".

2. Aggrieved by the said decision, the Appellant filed appeal bearing no. 2/5/2015-FCAT before this Tribunal. The appeal was dismissed holding as under:-

"We are of the opinion that the CBFC was justified in refusing to grant certificate for exhibition of the film for the reasons that the theme of the film was full of hate/inflammatory speeches given by all the leaders of the political parties and it tries to divide people on caste and communal lines and derogatory remarks have been made against individuals. The release of the film may cause not only communal disharmony but also disharmony amongst the members of different castes and communities it clearly violates the guidelines 2(xii), (xiii), (xvii), (xviii) and 3(i) of the guidelines issued for certification for films of public exhibition".

3. Aggrieved by the said decision of the CBFC and the Tribunal Appellant filed W.P. (C) 5598/2016 & CM 23267/2016 in the High Court of Delhi. The High Court after viewing the film held that the finding of CBFC & FCAT that the film was full of hate speech and inflammatory speeches was not sustainable. The court went on to observe that the film merely reproduces the speeches made by various leaders and party candidates at the time of General Election and recorded the actual events. Being a documentary, it records the actual events that had transpired during the election campaign. The court observed as under:-

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" Viewing the film as a whole, one does not get an impression that the theme is full of hate speech or inflammatory speeches. One does not get an impression that the film tries to divide people on caste or communal lines. Though some words used or some portion of the film may be in conflict with the guidelines framed by the Central Government in terms of Section 5(B) of the Cinematograph Act, 1962 (hereinafter referred to as the Act), however, neither the Board nor the FCAT has clearly spelt as to which part or dialogue of the film would violate the guidelines".

4. The matter was remanded back to re-examine the film in terms of the principles that have been enunciated elaborately and summarized in Para 6 of the judgment of the High Court. In view of the unequivocal finding by the court that the view of CBFC and FCAT that the film was full of hate and inflammatory speeches was not sustainable, the matter is no longer *res integra*, as far as this aspect is concerned. There is a definite finding recorded by the High Court in holding that the film viewed as a whole does not give the impression that the theme is full of hate and inflammatory speeches or that it would divide people on caste and communal lines. Accordingly, this aspect stands settled.

5. The Tribunal as constituted presently did not have the occasion to watch this movie earlier. Accordingly, directions were given for the film to be screened on 31<sup>st</sup> January, 2018 Counsel for the Appellant was also given an opportunity to be heard. During the hearing, the attention of the Appellant was drawn to certain imputations, allegations and counter allegations which could be considered *per se defamatory* and it was also brought to the notice of the Appellant that even the factual reproduction of speeches as made in the documentary would make the Appellant as Producer of the film responsible for the said imputations, apart from the maker of the imputations.

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6. Counsel for the Appellant submitted that the documentary had been made in the line of Appellant's public duty to cover the election campaign and to present the view points of different political parties and their candidates on a matter of public interest, which had exercised the minds of the people.

7. The attention of the Appellant was drawn in particular to the following spoken words of the Kinner in the English script at 00.41.02 :-  
 "Modi...came by airplane, made a big show, gathered huge crowds. What did he do? Nothing. The man who cannot keep his wife...he, who cannot keep his wife... can he govern the country? - No. They are all fake eunuchs. We are the real ones. Give us an opportunity to be amongst you."

We may note that earlier the English translation of the script was an incorrect one. Appellant filed the corrected version containing the above extract. As the movie is in Hindi, we are concerned with the Hindi version where the spoken words have been verified during the screening of the film and the same are reproduced below:-

"मोदी जहाज से आया क्या क्या करके चला गया. भीड़ बटोर के लेके आया क्या किया? कुछ नहीं किया. जो अपनी औरत को नहीं रख सकता ... जो अपनी औरत को नहीं रख सकता तोह क्या वो ये जनता चला पायेगा".

Appellant submitted that Prime Minister 'Modi' has been living alone and separated from his wife for long. The Hindi version as reproduced above is a possible view point expressed, which may not be in a good taste or palatable but nevertheless is the view of one of the candidates. Further the Producer had faithfully reported the spoken words of the "Kinner", without adding anything to it.

8. The Appellant's attention was also drawn to the conversation of the kinner with the reporter at 00:35:43 "अरविन्द केजरीवाल है तोह वह आम आदमी

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का टोपी लगाकर घूम रहे हैं ? वह आम आदमी हैं. दो महीने के अंदर सरकार का कितनी बढ़िया कुर्सी दिल्ली से मिली थी बेचके भाग आया. तोह बनारस से जीत के कहीं जायेंगे?"

The words "कुर्सी बेच के भाग आया" were per se defamatory. Counsel for the Appellant submitted that the above imputations are based on reproduction of actual happenings and events as recorded. It was part of the endeavor of the Appellant to remain objective, present a balanced view and obtain the viewpoints of all those involved in election. He submitted that they would plead justification, if necessary. Besides pleading that the imputations being fair comments made bona fide in the line of their public duty.

9. Appellant is directed to mute the word 'sala' from the sentence 'Uss sale ko desh se nhi bhgaya toh' as it appears in the script at 00.41.02.

Experience has shown that film audience is a discerning one, possessed of earthy wisdom. Coarse expressions or those in bad taste, do not find favor with them. Thereby achieving by self regulation one of the objectives of film certification, namely, ensuring films to be of aesthetic value and of good standards.

10. Appellant during the proceedings agreed to insert the Introduction/Disclaimer given below:-

#### **INTRODUCTION**

"Battle of Banaras ("the film"), is a documentary directed to cover the 2014 Lok Sabha election campaign in the constituency of Banaras from beginning to end. The film is a chronicle of the election campaign for the Banaras Lok Sabha constituency in the 2014 General Election. The film depicts the

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campaigns of the wide arena of candidates that stood for election, the viewpoints of various voters, stakeholders and groups; and sets the campaign against the larger character of the mystical holy city of Banaras. It depicts views of candidates, voters, reporters, and political analysts by juxtaposing them in an unpartisan manner. Most of the scenes which form part of the film were widely publicized and broadcasted by the print and news media during the elections and are widely available on the internet.

### **DISCLAIMER**

The film is a result of painstaking efforts put in by us in compiling and gathering the information by going through voluminous records pertaining to the 2014 elections in Banaras. We understand that the narrative may include imputations and references unpalatable to political parties or individuals and/or even considered defamatory by them. However, we wish to reiterate that these are records and reproductions of actual events and the veracity of these events having occurred is bona fide believed by them. We have endeavored to remain objective and present a balanced view of the election. We made efforts to obtain the view point of all the parties, candidates and other participants involved in the election and have portrayed them wherever available in their quest for truthful, balanced and objective reporting. During the heat of Election campaign accusations, allegations, counter allegations are freely made without restraint, these need to be assessed after making due allowance for the election tempo. Considered in the above light, the film and dialogues as presented are not intended to defame or denigrate anyone or to divide people on caste or communal lines. We shall plead justification, if necessary and say that the imputations and fair comments made are in the line of our public duty to give information on matters of public interest which have exercised the minds of people".

Producer & Director

The above Introduction/Disclaimer shall be screened prominently and accompanied by a voiceover in Hindi.

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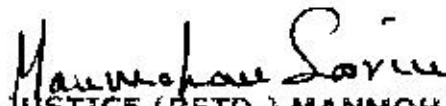
11. In view of the foregoing discussion, introduction/Disclaimer as agreed to be inserted and the observations of the High Court of Delhi in Writ Petition (C) 5598/2016 & CM 23267/2016, which are binding on this Tribunal, we are of the view that the appeal deserves to be allowed and is allowed. We accordingly direct issuance of 'UA' certification by the CBFC with the muting as directed in Para 9 and the Introduction/Disclaimer in Para 10 being screened prominently and read as a voiceover in Hindi at the beginning for a minimum duration of 2 minutes. Copy of the order be furnished to both the parties forthwith.



(POONAM DHILLON)  
MEMBER, FCAT



(SHAZIA ILMI)  
MEMBER, FCAT



(CHIEF JUSTICE (RETD.) MANMOHAN SARIN)  
(CHAIRPERSON, FCAT)