



End of the Arbitrary Era of Section 6(1) of the Cinematograph Act, 1952

Dr. Karuna Sharma

Assistant Professor, School of Communication, Doon University, Dehradun, India.

Email: karuna.doon@gmail.com

ABSTRACT: *Cinema as a form of art requires huge amount of investment and labour for culminating into a final expression. However, before releasing it for consumption of the public it has to undergo a strict screening process regulated by CBFC and adjudicated by (in case of any grievance) the Film Certification and Appellate Tribunal (FCAT). The procedure of regulation by CBFC and adjudication by FCAT to a large extent was in line with the ethos of the Constitution of India, particularly the Freedom of Expression and its reasonable restrictions. But the only disturbing feature of the procedure of screening was the arbitrary revisional jurisdiction which was vested with the executive, thereby defying the basic structure of constitution called the separation of power. The paper focusses on the misuse of Section 6 (1) i.e., revisional jurisdiction using the decided case laws of the Apex and Bombay High Court, and the final repealing of the same.*

KEYWORDS: Act, Central government, Constitution, Certification, Appellate tribunal.

INTRODUCTION

Cinema is an artistic expression of ideas, stories (sometimes inspired by reality), opinions etc. occasionally set to music, created with the objective to enchant, enthrall and more particularly to entertain. There are very few forms of art that can claim equal influence and presence in our daily lives (Justice Mukul Mudgal Committee, 2013) as enjoyed by cinema. The form of art called cinema [in common parlance referred to as 'film' wherein the term film is defined under section 2(dd) of the cinematograph act, 1952 as "film" means a cinematograph film] which has been a torch-bearer of social changes causing the society to deviate from age old dogma, threatened the contemporary governments and sparked-off the political debates, has such an impelling power of influencing the society that it becomes a perfect subject matter for regulation by a statute or an act of Parliament.

The need for such a regulating act was fulfilled by The Cinematograph Act, 1952(Act no. 37 of 1952) (Gazette of India, 1952) the long title of which states: "An act to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs" (Dhar, 2022). The enactment of the present cinematograph act happened in an era where cinema halls were limited. Cinema has undergone a radical change since then. The medium of cinema, the technology and even the audience have metamorphosed since the inception of The Cinematograph Act, 1952. Today there are many production houses and producers, thus, the films are now being made on digital formats, displayed in multiplexes with multiple screenings, and the audience is also informed with knowledge from trailers, reviews, internet and apps. Therefore, certification of films in present scenario is a highly sensitive

matter, requiring a transparent appreciation of issues critical to certify a film with fair understanding, expertise and above all just and reasonable approach.

Current paper focuses on sub-section (1) of section 6 of the Cinematograph Act, 1952 (Gazette of India, 1984) which had given extraordinary powers to the Central government in the matter of certification so much so that it amounts to be highly skewed towards unreasonableness and thus is in clear violation of freedom of speech and expression as envisaged under article 19(1)(a) and article 14 of the Constitution of India (The Constitution of India- Bare Act, 2021).

THE CINEMATOGRAPH ACT

The Central Board of Film Certification (CBFC) is a creation of statute under the Ministry of Information and Broadcasting, GoI, regulating the public exhibition of films under the provisions of the Cinematograph Act, 1952 (Gazette of India, 1984). According to section-3(1) of the Act: “For the purpose of sanctioning films for public exhibition, the Central Government may by notification in the Official Gazette, constitute a Board to be called the Board of Film Certification which shall consist of a Chairman and not less than twelve and not more than twenty-five other members appointed by the Central Government” (Dhar, 2022).

Films are ready for public exhibition in India, mainly through screening in multiplexes, Television channels, O.T.T. platforms and other digital media, once they have been certified by the CBFC. Prior to August 4, 2023, films were certified under four categories namely: Unrestricted Public Exhibition (U), Unrestricted Public Exhibition-but with a word of caution that Parental discretion required for children below 12 years (U/A), Restricted to adults only (A) and Restricted to any special class of persons or members of any profession (S) (Section 5 (1) Cinematograph Act, 1952).

Provisions of censorship are governed and guided by the restriction (reasonable) imposed under Article-19(2) of the Constitution of India which reads as under:

“Nothing in sub-clause (a) of clause (1) shall affect the operation of any law existing, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement of an offence (The Constitution of India- Bare Act, 2021).

The Cinematograph Act, 1952 has inculcated the above-mentioned provisions under section-5 (B) called the “Principle of guidance in certifying films” (The Constitution of India- Bare Act, 2021).

Despite the provisions under the Act, which provide for the Appellate jurisdiction under section-5 (C) and Review jurisdiction under section-5 (F) of the act and which are based on famous Latin maxims of the principle of natural justice : “*ubi jus ibi remedium*” and “*audi alteram partem*”, the Act contains a provision envisaged under section-6 (1) which has a superseding effect over all other provisions and thus the CBFC’s power are subservient to it and which is not fitting into to the “test of reasonableness of restrictions” as envisioned under the Article-19 (2) of the Constitution of India and is ultra-vires to the constitutional framework of part-III of the India Constitution (The Constitution of India- Bare Act, 2021).

Section-6(1) (Gazette of India, 1984) starts with an overriding tone: “Notwithstanding-clause”, thereby giving the Central Government and its official under the Ministry of Information and Broadcasting, (GoI), final say on matters related or incidental to the exhibition of films and leaving all other provisions as ineffective if the powers under it are invoked by the

Central Government(through its Joint Secretary) thereby reducing the entire idea of creating CBFC into a puppetry in the hands of the Executives, without an iota of appreciation of such highly expressive form of art which requires examination only by such persons who are qualified in the field.

According to section-6(1): *“Notwithstanding anything contained in this part, the Central Government may, of its own motion, at any stage, call for the record of any proceeding in relation to any film which is pending before, or has been decided by, the Board, or, as the case may be, decided by the Tribunal(but not including any proceeding in respect of any matter which is pending before the Tribunal) and after such inquiry, into the matter as it considers necessary, make such order in relation thereto as it thinks fit, and the Board shall dispose of the matter in conformity with such order:*

proviso (i)- Provided that no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted, as the case may be, except after giving him an opportunity for representing his views in the matter:

proviso (ii)- Provided further that nothing in his sub-section shall require the Central Government to disclose any fact which it considers to be against public interest to disclose (Section 6 (1), Cinematograph Act, 1952).

An analysis of proviso (ii) of the above sub-section which actually translates into an overriding power of Revision as vested with the Central Government, clearly demarcates that the discretion of the Central Government as while exercising such powers it is at liberty not to disclose any fact in rejecting the certification of a film or suspension of the same which according to its view are against the public interest, thereby giving them the power of revision with widest possible amplitude by the virtue of public interest in itself being the domain of endless parameters.

Thus proviso (ii) is in clear violation of the 3rd rule of the principle of natural justice (*Jus Natural*) as incorporated in our constitutional framework viz. the “Reasoned Decision” which states that any adjudication of the court given by the Adjudicating authorities should be substantiated by valid and reasonable grounds. The Supreme Court being the Apex body of interpretation of Legislative intent and various High courts have also demarcated this aspect of Revisionary power which has prejudicially affected and resulted into the injury to various films which otherwise ought not to be restricted had this proviso been liberally constructed into the statute.

DECIDED CASE LAWS

For the purpose of supporting the study some of the decided case laws are reproduced as under: In (K.A. Abbas v. UoI and Anr, 1970), the Supreme court while rejecting all other contentions of the Appellant, held one of his contentions as valid i.e., the Central Government could not be the final arbiter on the certification or otherwise of a film. The then Solicitor General, also conceded to this point of view of the Apex court and hence, Chief Justice Hidayatullah underscored that an expert rather than a secretary scrutinizing the film “draws more confidence”.

The outcome of this decision was the introduction of Film Certification Appellate Tribunal (FCAT) a legislative body established by Section 5 (D) of the Cinematograph Act, 1952, under the Ministry of Information and Broadcasting (Ministry of Information and Broadcasting, 2023). However, Central Government retained its revisional jurisdiction which was the major point of contention.

In another case, (Hiralal M. Shah v. CBFC, 1986), a writ petition was filed under Article 226 of the Constitution of India to challenge the impugned order dated 25.11.1985 passed by the Joint Secretary to the Government of India in exercise of the revision powers under section-6 of the Cinematograph Act, 1952. Under this order the Revisional body reversed the order dated 11.04.1985 of the FCAT (Film Certification Appellate Tribunal) thereby censoring the Marathi film named *Maficha Sakhsidar* (Eng Tranl. Approver) from exhibition, a based upon the famous case: Joshi-Abhyankar murder trial.

Allowing the Appeal, it was held by the Bombay High court:

“....., To permit a bureaucrat to disturb the conclusion recorded by the Film Certification Appellate Tribunal (FCAT), which is a high powered quasi-judicial body, in exercise of the revision jurisdiction and thereby substituting the personal view, would make the mockery of the substantive right of appeal conferred on the producer. It cannot be denied that the Central Government has Revision powers under section-6 of the Act to decide on any matter, even the matter decided by the FCAT, but such power should be exercise very sparingly and in exceptional circumstances. The question as to whether a film offends the guidelines as regards the violence, vulgarity or obscenity depends upon several factual circumstances and in respect of which when the expert body, like and Appellate Tribunal, has decided the matter affirmatively, then it is desirable that the Central Government should not casually disturb that conclusion in exercise of powers of revision by the Secretary who is not qualified to judge the effect of film of the public”.

In yet another case, (UoI v. K.M. Shankarappa, 2000), the Supreme Court disapproved of the Central Government retaining powers under section-6(1) of the Cinematograph Act, 1952. It was held that:

“The Government has chosen to establish a quasi-judicial body which has been given powers, inter-alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision, that decision would be final and binding so far as the Executive and the Government is concerned. The Executive has to obey Judicial orders. Thus, section-6(1) is a travesty of the rule of law and separation of powers which is one of the basic structures of the Constitution. The Executive cannot sit in an appeal or review or revise a Judicial order. At the highest, the Central Government may apply to the FCAT (Film Certification Appellate Tribunal) itself for a review, if circumstances so warrant. But the Central Government would be bound by the ultimate decision of the Tribunal” (Sarma, 2023).

Above Judgement stands till date. Most recently in, *Addissery Raghavan v. Cheruvalath Krishnadasan* [(2020) 6 SCC 275], the Apex court, held: *“it is not justified in interfering with the findings of fact when findings recorded by the Appellate authority do no suffer from perversity or misappropriation of evidence”.*

CONCLUSION

It is pertinent to mention here that when this article was conceived the Section 6(1) of the Cinematograph Act was still in force. However, during the writing of this article. the Central Government after almost 40 years of the last Amendment to the Cinematograph Act, 1952, aligning itself with the needs of the film industry and findings of the Apex court introduced the Cinematograph (Amendment) Bill, 2023 in the Rajya Sabha on 20.07.2023 which after discussions was passed by the Upper House and received the green signal of the Lok Sabha on 31.07.2023. The Bill received the assent of the President of India on 04.05.2023.

The Cinematograph (Amendment) Act, 2023 (No.12 of 2023), as the act is now referred to, is aimed at bringing landmark changes with regard to curbing of piracy for which new sections-6AA and 6AB are introduced. The most drastic step taken by the Central Government in this new act was the omission of section-6 (1) of the original Act, thereby keeping its intentions in line with the judgment of the Supreme court in *Union of India v. K.M. Shankarappa* (UoI v. K.M. Shankarappa, 2000), thereby preserving the idea of basic structure of the Constitution of India envisioned in the Doctrines of Rule of law and Separation of Powers.

Now the film fraternity will be free from the travesty designed by the whims and caprice of the Executives and the final authority of the film certification, CBFC, will gain autonomy. Moreover, the matters related to grievance redressal will be more transparent by the virtue of FCAT (film certification appellate tribunal) being the quasi-judicial body being given its respectful position in the amended law and the Revision jurisdiction which was otherwise a regressive feature of the Act being repealed. The idea of freedom of expression through the art form called cinema or films is now to a large extent subjected to reasonable restrictions as envisioned by our constitution makers under Article 19(2) of the Constitution of India.

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