

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION NO. 32840 OF 2009

**PAZHASSI RAJA CHARITABLE
TRUST & ANR.**

....Petitioner (S)

VERSUS

UNION OF INDIA & ANR.

.....RESPONDENT(S)

ORDER

SURINDER SINGH NIJJAR,J.

1. We have heard the learned counsel for the petitioner, Mr. Krishnan Venugopal, Sr. Adv. and the counsel for the respondent Union of India, Mr. Ashok Bhan.

2. This matter was mentioned yesterday when the Court directed it to be listed today as Item No.1. The petitioner claims to have produced a Malyalam film of national importance, called "PAZHASSI RAJA". Its purpose is to

enlighten people about the heroic life history of ‘SHRI KERALA VERMA PAZHASSI RAJA’. For wider circulation the film has been dubbed into Hindi, Tamil and Telugu and English. It is said to have been widely acclaimed. The petitioner claims that inspite of the artistic and historic importance of the film, it has been arbitrarily not accepted for screening at the International Film Festival of India – 2009. Aggrieved against the wholly arbitrary conduct and actions of the selectors at the Film Festival, the petitioner has unsuccessfully approached the Kerala, as well, Delhi High Court.

3. Learned counsel submitted that the Learned Single Judge of the Delhi High Court misdirected itself in not granting the interim relief. In view of the fact that the film festival was coming to an end on 3rd December 2009, in the absence of interim relief, the petitioner will be left remedy-less. Learned counsel submitted that the Learned Single Judge failed to address any of the issues alleged in the writ petition. In view of the fact that there had been a flagrant disregard of a mandatory regulation, viz., the Regulation 8.2 of the Indian

Panorama Regulation, 2009, grant of interim relief would be a natural consequence.

4. The petitioner has filed a writ petition in the Delhi High Court which is pending adjudication. In the aforesaid writ petition the Learned Single Judge of the High Court has issued notice to the respondents to show cause as to why rule *nisi* be not issued. Necessary direction has been issued for exchange of affidavits. The matter has been directed to be listed for hearing on 13th of April 2010. The petitioner approached the High Court earlier by way of writ petition making similar grievance as is made in the present proceedings. This writ petition was disposed of on 27.10.2009 by granting liberty to the petitioner to make a representation to the respondent. Consequently a representation was made on 30.10.2009. Several issues relating to the merits of the petitioner's film including its historical importance as well as other irregularities and illegalities in the procedure followed by the Jury in the selection process were highlighted. When the representation was not disposed of the petitioner filed the second writ petition. At the motion hearing of the writ petition

an assurance was given by the respondents to consider the representation of the petitioner forthwith. Thus, this writ petition was also disposed of with a direction to the respondents to take a view on the representation. Ultimately, the representation submitted by the petitioner has been decided on 19.11.2009. The claim of the petitioner has been rejected. Therefore, petitioner approached the Delhi High Court for the third time by way of writ petition i.e., Writ Petition (c) No.13352 of 2009. In this writ petition a Civil Miscellaneous Application No.14682 of 2009 was filed seeking a direction to the respondent for screening the film of the petitioner as a special entry. This Civil Miscellaneous Application has been dismissed by the Learned Single Judge of the Delhi High Court by the impugned order dated 26.11.2009.

5. We may also notice here that another aggrieved producer of another film had approached the Kerala High Court with similar relief. Initially a Single Judge of the Kerala High Court granted interim relief and stayed the screening of all films. The matter was carried in appeal before the Division Bench.

Before the Division Bench it was submitted that the writ petitioner will not come in the way of conducting the festival. He would be satisfied if it is ensured that the respondents strictly complied with the regulation in future. Necessary direction was issued by the Division Bench to the respondent that it shall abide by the regulation in future.

6. Mr. Venugopal vehemently argued that if the petitioner is denied the interim relief the writ petition itself would be rendered infructuous. Learned counsel also submitted that even though the remedy of approaching the Division Bench in Letters Patent Appeal is available, in the facts of this case it was necessary to move this Court as this Court can mould the relief under Article 142 of the Constitution of India. Learned counsel submitted that the superior courts are not powerless to grant interim relief, even in cases, where there is a flagrant breach of statutory rules which are mandatory in nature.

7. Learned counsel has highlighted three main legal issues. Firstly, he submits, that where there is a right there is a remedy. In any event according to him the Learned Single Judge failed to exercise its jurisdiction in not addressing the

controversy in issue. Learned counsel further submitted that this Court can entertain an SLP in compelling circumstances even if the normal remedy of Letters Patent Appeal is not availed by a party. In support of his submission, Learned Counsel relied on a judgment of this Court in **Pawan Kumar vs. State of Haryana, (2003) 11 SCC 241**. We are of the considered opinion that the aforesaid judgment is of no assistance to the petitioner. In that case this Court observed as follows:

“Apart from the salutary powers exercisable by this Court under Article 142 of the Constitution for doing complete justice to the parties, the powers under Article 136 of the Constitution can be exercised by it in favour of a party even suo motu when the court is satisfied that compelling grounds for its exercise exist but it should be used very sparingly with caution and circumspection inasmuch as only the rarest of rare cases. One of such grounds may be, as it exists like in the present case, where this Court while considering appeal of one of the accused comes to the conclusion that conviction of appealing as well as non-appealing accused both was unwarranted. Upon the aforesaid conclusion arrived at by the Apex Court of the land, further detention of the non-appealing accused, by virtue of the

judgment rendered by the High Court upholding his conviction, being without any authority of law, infringes upon the right to personal liberty guaranteed to the citizen as enshrined under Article 21 of the Constitution. In our view, in cases akin to the present one, where there is wither a flagrant violation of mandatory provision of any statute or any provision of the Constitution, it is not that this Court has a discretion to exercise its suo motu power but a duty is enjoined upon it to exercise the same by setting right the illegality in the judgment of the High Court as it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to interfere with the same would amount to allowing the illegality to be perpetuated. In view o f the foregoing discussion, we are of the opinion that accused Balwinder Singh alias Binder is also entitled to be extended the same benefit which we are granting in favour of the appellant.”

8. In our opinion the aforesaid observations reiterate the well-settled propositions of law as well as the parameters within which this court will exercise its power under Article 142 of the Constitution of India to do complete justice in a particular case. But those are the matters which are relatable directly to Article 21 and akin to deprivation of life. In other words issues which would fall within the category of ‘rarest of

rare' cases. This Court can grant the relief in cases: where manifest injustice has been done: or where there is manifest illegality or manifest want of jurisdiction. In the present case we are concerned with a purely commercial venture, where the film in question "Pazhassi Raja" is vying for fame with another commercial film called "*Mangal Pandey*". It is not disputed that the film "Pazhassi Raja" has already been released on the commercial sectors. It seeks to depict a view point on the first war of Independence which may or may not be generally acceptable. We are not called upon to decide on the issue in these proceedings. In any event the film is a view point of the individuals or the team involved in the production of the film. We are unable to see how Article 21 can be said to have been infringed in the facts and circumstances of this case. We are also not impressed with the submission of Mr. Venugopal that without grant of interim relief the petitioner would be rendered remedy-less. In case it is ultimately found by the Delhi High Court or in any other proceedings that the Jury, selectors of the films to be screened, have acted arbitrarily or in infringement of the statutory regulations, remedy of damages

by way of a civil suit would always be available to the petitioner. The judgment relied upon by Mr. Venugopal in the case of **Dhannalal vs. Kalawatibai and others (2002) 6 SCC 16** reiterates the principle in the legal maxim *Ubi jus ibi remedium* which translates that “there is no wrong without a remedy. Where there is a right there is a forum for its enforcement.” We have no reason to take a different view on this legal principle . We are however of the opinion that the petitioner has not been rendered remedy-less merely by denial of interim relief.

9. We are also not impressed with the submission of Mr. Venugopal that merely because the petitioner has been vigilant in projecting the grievance as well as his rights, interim relief ought to follow. The film of the petitioner has to compete with all other entries. Its entry was dependent upon the relative merit assessment by the panel of jurors. Its merit cannot be adjudged individually.

10. Mr. Venugopal then submitted that the selection process has been vitiated as there has been a breach of Regulation 8.2. The regulation is as under:

“8.2 The Chairperson of the Feature Film Jury may constitute a maximum of two panels from amongst the members of the jury. Each panel will recommend not more than 33 % of the films viewed by it for combined viewing by the full jury.”

11. A perusal of the above would show that the Chairperson of the Feature Film Jury has the power to constitute a maximum two panels, for viewing all the films and to recommend not more than 33 % of the films to be viewed by the full Jury. According to Mr. Venugopal one of the Jury members, Mr. Bobby Bedi was not present for 13 out of a total 15 days that the Juries saw the movies. This fact was admitted by the respondents in the counter filed by them before the High Court of Kerala. According to the learned counsel the whole selection process has been conducted arbitrarily, there has been criticism in the media with regard to the functioning of the Jury. In our opinion, the learned Single Judge, considering the same submissions, has correctly observed that all these issues will be determined at the final hearing, upon receipt of the counter of the

respondents. The Court normally would not substitute its own opinion for that of the experts. Decision about the quality and merit of the film of the petitioner can only be taken in comparison to other entries. That is the job of the experts. We see no reason to defer with the view expressed by the learned Single Judge of the Delhi High Court. It is also held by the Delhi High court that merely because a person has come to court, would not ipso facto entitle the petitioner to relief on the very terms on which a prayer is made. In our opinion the aforesaid observation cannot be said to be as either illegal or erroneous.

12. Mr. Venugopal, has then submitted that the selection process has been altered midway. This was in response to the submissions made by the learned counsel for the Union of India before the High Court. The learned counsel had also made a reference to the communication dated 15.10.2009 received from Mr. Bobby Bedi which was placed before the Delhi High Court. The response was to the following effect:

“This is with reference to my appointment as a member of the above jury.

Due to the change in the final dates for the jury viewings I had to reschedule some of my travel plans and as a result was unable to attend some of the viewings. However, I had discussed this with the Directorate and the chairman of the Jury and my other jury group members and carried a DVD copy of all the films that I would be missing. I can confirm that all the films in my group have been seen by me and discussed with my team members Gautaman Bhaskaran and Raja Mitra and we have come up with a final list of recommendations.”

13. It was also submitted before the High Court by the learned counsel for the Union of India as follows:

“Mr. A.S. Chandhlok, learned Additional Solicitor General has pointed out that on viewing the film in question, it was the unanimous decision of the jury not to include it in the Indian Panorama 2009.”

14. We are unable to discern from the aforesaid any change in the criteria. We have however refrained from expressing any opinion on the same since the writ petition filed by the petitioner is pending adjudication before the High Court.

15. We may reiterate that the facts and circumstances in the present case were not such as to permit the petitioner to bypass the normal procedure of filing, Letters Patent Appeal

against the order of the learned Single Judge before approaching this Court by special leave petition.

16. In view of the aforesaid we decline to interfere with the order passed by the learned Single Judge of the Delhi High Court. The special leave petition is dismissed.

.....J
(TARUN CHATTERJEE)

.....J
(SURINDER SINGH NIJJAR)

NEW DELHI
DECEMBER 02, 2009