

**INDIBILITY CREATIVE PVT.LTD. V/S GOVT. OF WEST  
BENGAL, 2019 [WRIT PETITION (CIVIL) 306 OF 2019]**

**Court:** Supreme Court of India

**Citation:** Writ Petition (Civil) 306 of 2019

**Delivered On:** April 11<sup>th</sup>, 2019

**Bench:** Dr. D. Y. Chandrachud, Hemant Gupta, J.J.

**Relevant Section/Article:** Article 19 of the Constitution of India

**INTRODUCTION:**

This case is related to the Fundamental Right of Freedom of Speech and Expression- Article 19 (1) of the Indian Constitution. A ban was imposed on the screening of a Bengali film i.e. Bhubishyoter Bhoot (Future Ghosts) on the grounds of causing the violence and disturbance among some people. This ban later held to be unconstitutional and beyond the statutory power of the State Authorities.

There was a violation of Petitioners (director and producers of the film) Fundamental Right of Freedom of Speech and Expression as the film was duly certified by the Central Board of Film Certification and even after that the ban was imposed which in turn caused a huge loss to the Petitioners.

There is an obligation on the State to protect the fundamental rights of the citizens and not to do anything that may restrict their rights. There are Reasonable Restrictions given under Article 19(2) of the Indian Constitution which renders this right of Freedom of Speech and Expression not to be absolute.

In a democratic country like India, everyone's views need consideration and therefore it is the duty of the state to protect the rights and to ensure the law and order situation in the country. Views of the opposition or dissatisfaction of the people must be given due importance as everything should be done according to the general public interest.

## **FACTS OF THE CASE<sup>1</sup>:**

1. The Petitioners contributed in the making of a Bengali film titled “Bhobishyoter Bhoot” (Future Ghosts). The first petitioner was a company and second and third is the Co-producers and directors of the film. This film is a political and social satire about ghosts who are rescuing the absolute and marginalized in order to get the attention. The film brings forth the emerging culture of journalism and film making and politics. The film adopted the agency of ghosts as protectors of the haunted house against builders.
2. The film was scheduled to release on 15 February in the districts of West Bengal and Kolkata. On 19 February 2019, it received a U/A certification<sup>2</sup> for public exhibition issued by the Central Board of Film Certification. However, three weeks prior to its release when the film was being promoting, petitioner no. 2 received a phone i.e. on 11 February and thereafter a letter asking for an advance screening of the film for senior officials as according to reports, the film can cause political and order issues. Petitioner no. 2 responded on 12 February that the film is already duly certified by CBFC and therefore, according to rule of law no other authority or public office can interfere in this matter.
3. As a film was released on 15 February 2019, it was removed from cinemas on the very next day and the tickets were refunded. This act was allegedly done due to the orders issued by Higher Authorities.
4. The petitioner therefore files a writ petition under article 32<sup>3</sup> of the Indian Constitution before the Supreme Court as their Fundamental right i.e. Freedom of Speech and Expression has been violated. The petitioners apprehended the unlawful interference of the police and the state authorities with the public exhibition of the film. Only two exhibitors out of 48 were doing the screening of the film.

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<sup>1</sup> [Writ Petition \(Civil\) 306 of 2019](#)

<sup>2</sup> Unrestricted public exhibition with parent’s guidance for children under age twelve

<sup>3</sup> Right to Constitutional Remedies

**ISSUES RAISED:**

1. Is there any interference caused by the state authorities in the enjoyment of the Fundamental Rights (here, mainly the Freedom of Speech and Expression) of the petitioners?
2. This film has already been certified by the Central Board of film certification and even after that the state authorities through its police power interfered in this matter and stopped the screening of this film. The CBFC is an expert body entrusted with the power to act according to Cinematograph Act<sup>4</sup>. So, is there any violation of Rule of Law here done by the state authorities?
3. Whether the State Authorities (and its agencies) and the police has resorted to the method that goes beyond the constitutional limits and abrogated the Fundamental Rights of the petitioners (producers and directors) and viewers?

**RULE OF LAW WHICH APPLIES:**

The court referred the philosophical and literally writings of the legends like Simone de Beauvoir, Voltaire, etc. in order to broaden their perspective relating to the freedom of speech and expression in a democracy like India. This is one of the most important fundamental right in the Indian Constitution and the basic human right. This right needs more protection and focus.

The court mentioned the *Ronald Dworkin's concept of Democracy*. It is related to the involvement of minorities and allows them to express their views on the political functioning of the government. Citing *John Stuart Mill*, the Court observed that there must be reasonable restrictions on the enjoyment of the Fundamental Rights and it must be focused in public welfare and good. He also said that freedom of speech is a precondition for a society to flourish.

Tyranny should not be a part of democratic society and everyone views should be given due importance. Also, the film has been certified by the people with appropriate knowledge maybe coming from the different walks of life.

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<sup>4</sup> [Act no. 37 of 1952 \(relating to certification of films for exhibition\)](#)

Criticisms of the people openly about the government policies and orders cannot be called a ground for restricting the Freedom of Speech and Expression of the petitioners.

The Court cited the precedent of the case *S. Rangarajan vs P. Jagjivan Ram*<sup>5</sup> to establish that in case of screening of films the Fundamental right of Freedom of Speech and Expression of the producers and directors i.e. Article 19(1) (a) cannot be restricted on the basis of public violence, threat to the security, etc. {Article 19(2)} if the film is certified to be unobjectionable and within the limits of Constitution. Also, it is observed that if a film has been certified by the film board or tribunal (must be according to Constitutional principles), no other authority has the power to review that decision. The government should ensure that law and order should be maintained in the society.

In *Romesh Thappar Vs State of Madras*<sup>6</sup> it was observed that Freedom of Speech and Expression includes Freedom of Press also (with reasonable restrictions). It was held that without liberty of circulation, the publication would be of little value. The propagation of idea through media is important.

In *K.A. Abbas vs Union of India*<sup>7</sup> the issue of prior censorship of films under article 19 to came into the consideration of the Supreme Court of India. Under the Cinematograph Act 1952, films are divided into two categories according to their content, etc. - 'U' films for unrestricted exhibition in the cinema halls and 'A' films that can be shown to adults only. It was held by the Supreme Court that Motion Pictures like in the movies still the emotions more deeply in people than any other form of the art. Therefore, the classification of films between 'A' and 'U' category is valid and in the benefit of general welfare.

### **APPLICATION OF RULE OF LAW WHICH APPLIES:**

At the time of the hearing of the case the court considered losses caused to the petitioners due to the interference in the screening of the film by the state authorities.

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<sup>5</sup> [S. Rangarajan vs P. Jagjivan Ram \[1989 SCR \(2\) 204\]](#)

<sup>6</sup> [Romesh Thappar Vs State of Madras \[AIR 1950 SCR 594\]](#)

<sup>7</sup> [K.A. Abbas vs Union of India \[\(1971\) AIR 481\]](#)

Also, there is an obligation on the state to protect the Fundamental Rights and other rights of its citizens and do the needful in case of their violation. The state and its agencies are also under the obligation to respect the Fundamental Rights of the citizens and work according to that.

Court also observed that there is an unconstitutional attempt to invade the rights of the producers of the film. The attempt has been made to silence criticism and critique and this should not be acceptable in a free and democratic society. Although, the Freedom of Speech and Expression is not an absolute right and restrictions are given under Article 19(2) but here, there is no ground available to impose those restrictions.

*Article 19 (1) of The India Constitution Gives Citizen the Right to:*

- a) To Freedom of speech and of expression*
- b) To assemble peacefully and without the arms*
- c) To form associations and unions*
- d) To move freely throughout the territory of India*
- e) To reside and settle in any part of the territory of India*
- f) Omitted*
- g) To practice any profession or to carry out any occupation business or trade*

The power or the right to express one's opinion without any restraint or legal penalty is known as the Freedom of Speech. This is a necessity of a free society to provide everyone the right express their opinions either by mouth, in writing, printing, pictures, etc.

Freedom of speech and expression create an atmosphere where people can put forward their views and thoughts without any fear (must be within Constitutional limits). This will give people a feeling of being heard and often lead to better solutions to problems.

In a democratic society, there must be freedom of press so that general public can show their dissatisfaction or satisfaction with the government policies. This will avoid unrest among people as they can express themselves.

The Freedom of expression helps people to learn something new from books, television, radio, social media platforms. Also, this will lead to the intellectual development and increased awareness among the people. Human history showed that the progress is possible because of the power of thoughts. It is the duty of the State to control the violent audience or thoughts and to maintain law and order.

Freedom of Speech and Expression also involved the "Freedom of Silence". This has been established by the Judicial Precedent in the case of *Bijoe Emmanuel vs. State of Kerala*.<sup>8</sup>

Grounds of Restrictions- Article 19(2)

- Friendly relations with Foreign State
- Public Order
- Decency and Morality
- Contempt of Court
- Defamation
- Incitement of an Offence
- Sovereignty and Indignity of India

CONCLUSION:

On 15 March 2019, the Supreme Court by an order directed the Chief Secretary and the Principal Secretary of the Department of Home in the Government of West Bengal to ensure the screening of the film without any further obstruction and interference by any authority.

Also, the Director General of Police of the State of West Bengal is directed to ensure the safety measures for the viewers of the film and for the property of the exhibitors. Further the court directed the Joint Commissioner of the Police to withdraw the letter sent to the petitioners dated 11 February 2019. The state authorities were also directed to inform the exhibitors that the ban has been removed on the screening of the film and they will be provided with security from the state if they resume the screening of the film.

The court concluded that the State authorities had interfered with the Fundamental Right of the petitioners i.e. Freedom of Speech and Expression {Article 19(1)} by restricting the screening of the film. There was no valid reason provided by the state for the ban on the

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<sup>8</sup> [Bijoe Emmanuel vs. State of Kerala \[AIR \(1986\) Ker 32\]](#)

screening of the film and this is out of their statutory power. Also, the petitioners right to pursue a lawful business has been violated. The Judicial Review under Article 32 of the Indian Constitution cannot be operated here. The actions of state agencies can be called arbitrary. The Respondents were directed to pay compensation of Rs. 20 Lakhs within a period of one month by the court including legal fees of Rs.1 Lakh.

***“WITHOUT A FREEDOM OF SPEECH THERE IS NO MODERN WORLD,  
JUST A BARBARIC ONE.”***



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