

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.05.2008

CORAM

THE HON'BLE Mr. JUSTICE K.VENKATARAMAN
and
THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

Writ Petition Nos.11983 and 12929 of 2008

International Sri Vaishnava Dharma
Samrakshanaa Society, rep. by
its President Sri Swami Govinda ... Petitioner in
Ramanuja Dasa W.P.11983/08

Kalyana Suba Samithi ... Petitioner in
W.P.12929/08

Vs.

1.The Censor Board,
Shastri Bhavan, Chennai-6.
2.M/s.Oskar Films (P) Ltd.,
rep. by V.Ravichandran ... Respondents
3.K.S.Ravikumar in W.P.11983/08

1.The Censor Board,
Shastri Bhavan, Chennai-6.
2.M/s.Oskar Films (P) Ltd.,
rep. by Sri Ravichandran
3. Secretary to Government,
Home Department, Govt. of ... Respondents
Tamil Nadu, Secretariat, Chennai. in WP.12929/08

Writ petitions have been filed under Article 226 of The
Constitution of India to issue a Writ of Mandamus,

WP.No.11983/08 : Directing the first respondent to cut and remove offending scenes in the film "Dasavatharam" while issuing Censorship Certificate without removing offending scenes such as,

(1) Violent clash between Saivaitu and Vaishnavites,

(ii) Mr.Kamal Hassan stepping on Pranava Mandiram "Om" and tramping on Holy "Bhagavat Geetha",

(iii) tieing of Ramanujar with idol by Sri Ranga Ranganathar and pushing it into sea by Saivaites and presence of terrorist in sanctum sanctorum and substitute title of Dasavatharam with any other suitable title and such other scenes,

and forbear the respondents 2 & 3 from releasing the film releasing the said picture without effecting removal of such offending scenes and

WP.No.12929/08 : Petition praying under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the screening of the production called "DASAVATHARAM" produced by the 2nd respondent, and give suitable instructions to the 3rd respondent to take adequate measures for protecting the life and safety of the general public and directing the 1st respondent to withdraw the certificate granted for screening the movie as stated therein.

For Petitioner : Sri Swami Govinda Ramanuja Dasa,
party in person (WP.11983/08)
Mr.R.Subramanian (WP.12929/08)

For Respondents : Mr.M.Ravindran, ASGI, for R.1
Mr.R.Shanmugam, for R.2
Mr.Kravi, for R.3

COMMON ORDER

K.VENKATARAMAN, J

Posing that the film 'Dasavatharam', the name by itself and certain scenes in the said film would hurt the feelings of the Hindus more so the Vaishnavites, the petitioners have approached this Court for stalling the release of the said movie.

2. W.P.No.11983 of 2008 has been filed for issuance of writ of mandamus directing the first respondent to cut and remove the offending scenes in the film 'Dasavatharam' mentioned thereon while issuing Censorship Certificate and forbear respondents 2 and 3 from releasing the said picture without effecting removal of such offending scenes.

3. W.P.No.12929 of 2008 has been filed for writ of mandamus forbearing the screening of the production called 'Dasavatharam' produced by the second respondent and to give suitable directions to the third respondent in the said writ petition viz., the Secretary to Government, Home Department, to take adequate measure for protecting the life and safety of the general public and directing the first respondent to withdraw the certificate granted for screening the movie.

4. The short facts which led to the filing of the writ petition in W.P.No.11983 of 2008, as put forth by the petitioners, are as follows:-

(a) The petitioner society in W.P.No.11983 of 2008 was formed to protect and propagate the Vaishnava Dharma. The Vaishnavites preach tolerance and non-violence. The mantra of Dasavathara Thirunamams are chanted by them. The sacred name 'Dasavatharam' is yet other name of Sriranga Ranganathar. 'Dasavatharam' depicts ten incarnation of God namely Macha, Koorma, Varaha, Narasimha, Vamana, Parasurama, Rama, Balarama, Krishna and Kalki.

(b) On 01.05.1998, the T.V. Channel telecast directly the release trailer in Kalaigiar Tholaikatchi with respect of 'Dasavatharam' Tamil Talkie Film featured by Sri Kamala Hassan, directed by Sri Ravikumar and produced by M/s.Oscar Films (P) Limited. The special function was being intercepted by the telecast of the trailer of 'Dasavatharam' film. Some of the scenes in 'Dasavatharam' were video recorded and scanned. The title given to the Tamil Talkie picture sarcastically ridicule the Hindu religious sentiments in disguise. The title 'Dasavatharam' has given attraction and lure the Hindus. The offensive scenes such as clash between Saivaites and Vaishnavites occupy the theme of the story. It is contrary to past events recorded and registered in the history. It wounds the feelings every sect of Hindus.

(c) On 01.05.2008, the President of the petitioner society received several phone calls from public who follow and embrace Hindu faith in connection with some of the offensive scene telecast in the trailer of Tamil film 'Dasavatharam' produced by the second respondent and directed by the third respondent. The public in general and Vaishnavites in particular sect among Hindus are very much agitated and offended by giving title to the screenplay as 'Dasavatharam'. Though there is no intellectual property in the use of title of 'Dasavatharam', but it offends the religious faith.

(d) The trailer of 'Dasavatharam' showed offending scenes particularly the hero of the film Mr.Kamala Hassan steps on Pranava Mantram "Om" and gains force to tramp on Bhagavat Gita. It offended the sentiments of every Hindu particularly Vaishnavites like the members of the petitioner society. In the history of Ramanujachariar, none of the

Vaishnavites took to violence. It is seen that Mr. Kamala Hassan, who acted in the role of Ramanujar was tied along with idols of Sriranga Ranganathar and was pushed into the sea by the Saivaites. In the history, there was no such incident or occurrence. Further it was exaggerated in the screenplay, which will promote clash between Saivaites and Vaishnavities. Even if it is alleged that they were part history, it need not be screened in such a way to create hatred and violence.

(e) In the meeting held on 01.05.2008, a resolution was passed for removal of the offending scenes and religious clash. The offending scenes like religious clash between Saivaites and Vaishnavites, terrorism and violence, Mr. Kamala Hassan's Adventure stepping on Pranava Mandram "Om" to gain force and tramped on Holy Bhagavat Gita abuse of title and mantra 'Dasavatharam' and such other scenes. Thus, the petitioner society has come forward with the above writ petition for the relief set out earlier.

5. The case of the petitioner in W.P.No.12929 of 2008 in nutshell is as follows:-

(a) The picture 'Dasavatharam' has been deliberately taken for screenplay with a view to fool the general public to denigrate the Hindu religion and thereby hurt the sentiments of the people in their faith of Hindu religion and wounding them irreparably. The two counts are (i) use of the term 'Dasavatharam' not connected to the movie and (ii) depicting certain things that are not true account of history.

(b) The name of 'Dasavatharam' has been deliberately used with a view to convey the general public that the picture is a religion based one but in truth, it is a mockery of Hindu religion. It could trigger violence, social unrest and even riot. Above all, it will seriously wound the feelings of the people in general and Hindus in particular for the very use of the noble and sacred name 'Dasavatharam' to a picture not connected to Hindu religion. The incident of removal of the Pallikonda Ranganathar and throwal of it in the sea is contrary to the truth. The relevant king at that time is Kulothunga Chozhan - II. In fact, he had constructed the Great and Mighty Vaishnava Temple at Raja Mannarkudi. While so, he could not have removed and thrown the deity into the sea. The temple referred to is Chidambaram and to this day, the Pallikonda Ranganathar is there.

(c) The scene in the movie shows tying of the Great Ramanujachariar with the deity for being thrown into the sea and in fact, a scene showing the throwing has been shown. The incident of throwing has never happened. By showing this scene, a hatred and conflict between Saivaities and Vaishnavites is sought to be created. The movie also shows that the great Ramanujachariar has killed several Saivities, which is not a fact and even if it be a fact, it ought not to

be shown for that would trigger violence and instances are many that Governments have suppressed such a showing. Thus, the petitioner in the said writ petition has come forward with the relief of mandamus referred to above.

6. Counter affidavit has been filed by the first respondent Censor Board in W.P.No.11983 of 2008, which brings about the following facts:-

(a) The petitioner had not explained as to how the title 'Dasavatharam' sarcastically ridicules or denigrates the religious sentiments of Hindus in disguise. The petitioner had not explained how and why the title of the film 'Dasavatharam' offends the religious faith. The title 'Dasavatharam' does not violate any of the guidelines issued under the Cinematograph Act. Hence, there cannot be any reason to object the said title. In fact, decades back, a film titled "Navarathri" which means 'nine nights' starred by late Mr.Sivaji Ganesan, was similarly certified and drew no offence from sections of public. Moreover, CBFC has also certified films with social message, carrying titles like 'Avatharam', 'Kalki', etc.

(b) The film does not contain any clash between the Saivaites and Vaishnavites. On the contrary, it only picturises a scene where the Chozha King Kulothunga - II, who is known for his staunch faith in Shaivism, persecuted the Vaishnavites including their Guru Sri Ramanuja, which are in conformity with history.

(c) The allegation that Mr.Kamala Hassan, the main character of this film is non believer of god, need not be taken cognizance by CBFC in certifying the film. The first respondent had not certified the scenes such as the stepping on Pranava Mantram or tramping on Bhagavat Gita. Mr.Kamala Hassan has not played the role of Sri Ramanuja as claimed by the petitioner, instead he had played a character called Rangarajan Nambi, an ardent disciple of Ramanuja and makes a supreme sacrifice due to his 'Gurubakthi'. He even fights with the King's soldiers who attempt to remove the idol of Govindaraja from the Temple of Chidambaram. But he was subdued by the King's might and when the King orders him to chant Panchakshara Mantra 'OM NAMASHIVAYA', contrary to the expectation of the King, he chants the 'Ashtakshara Mantra' (OM NAMO NARAYANA) with all the fervor and for this he was tied with the idol of Lord Govindaraja and thrown into the sea, the natural abode of Lord Mahavishnu.

(d) It is a historical fact that the Chozha King Kulothunga-II, persecuted the Vaishnavites and Shri Ramanuja, who escaped from his clutches had lived in self exile in Mysore. Kulothunga-II made attempts to find Shri Ramanuja and in his efforts he even blinded Koorathalvar, one of the popular Vaishnavite saints, known for his Gurubakthi.

(e) The petitioner's presumptions are based on his imagination and the film does not contain any violent sectorial clash between Saivites and Vaishnavites and no scene in the film seems to create hatred sect. This film pleads for abhorrence of religious intolerance and extremism among religious sects.

(f) The examining committee of the film has previewed the film on 22.04.2008. After fully convinced that this film does not violate any of the Cinematograph Guidelines in its certified form, has issued a certificate with 'U' classification subject to cuts. The examining committee had not seen any such scene where either Mr. Kamala Hassan in any of the roles played in the picture steps on Pranava Mantra or tramps on the Holy Baghavat Git, which is evidenced by the endorsement to the certificate with cut list. Even without viewing the film, the petitioner preferred this petition, which is highly premature and is not maintainable. The impact of any scene or any part of the film can only be assessed, after viewing the film in its entirety. Thus, the first respondent prays for the dismissal of the writ petition.

7. The second respondent, the producer of the film had filed a counter affidavit, which brings out the following facts, which are in nutshell are as follows:-

(a) The writ petition had been filed with a view to get more publicity and to waste and misuse the precious judicial timings of this Court at the cost of general public and at the cost of the second respondent, who invested several crores of rupees in the film production keeping in high esteem of the entire religions.

(b) The relief sought for by the petitioners cannot be granted at this belated stage. Once the Censor Certificate is issued after examining the film, the question of removing any scene at the choice of the petitioner as claimed by the petitioner does not arise.

(c) The President of the petitioner society, who has not seen the film cannot file the writ petition with certain imaginary concept on mere presumptions that certain scenes of the film produced by the second respondent hurt the feelings of Vaishnavites and such scenes and sequences in the said film are contrary to historic events.

(d) The theme of the film 'Dasavatharam' is not mainly on the alleged clash between Saivaites and Vaishnavites and the exact view and the exact theme and story line cannot be revealed at this stage as the production of the film 'Dasavatharam' is commercial venture by the second respondent and if it is revealed at this stage, it would drastically affect the business of the second respondent, who has already invested huge crores of money, anticipating several hundreds of crores of business throughout.

(e) No concrete material has been placed by the petitioner in respect of the allegations made in paragraph 4 of the affidavit filed in support of the writ petition. In the absence of any proof, the apprehension of the petitioner is without any basis. There is no scene in the film 'Dasavatharam' hurting the religious sentiments of any Hindus, particularly the Vaishnavites. The entire film glorifies not only the religious sentimentss of Hindus but also the religious sentimentss of Christians and Muslims, including Sikh religion. No scene has been shot such as causing disrepute to Pranava Mantram 'Om" or to sacred book Bhagavat Gita.

(f) It is not correct to state that Mr.Kamala Hassan had acted in the role of Sri Ramanujachariar and it is false to state that Sri Ramanujar was tied to the idol. The tying of hero with an idol before it was left in the ocean, is a fiction out of imagination and development for the purpose of the film and nothing else. Further, it is not correct to state that there is story line of terrorists entering into the sanctum of any temple as alleged. The story line and the theme are part of history of Tamil Nadu and this has been reflected in the book published by the Tamil Nadu Government vide part II, page 94 of the book titled as 'Pirkala Cholar History' and page 349 of the book titled as 'The Cholas', published by the University of Madras and page 314 of the Tamil Book titled as 'Tamil Nadu History - Chola Peruvendhar Times, Volume IV part II.

(g) Any attempt to stall the film or to interfere with the release of the film as censored by the first respondent, would amount to curtailment of freedom of speech and expression as guaranteed under Article 19 (1) of The Constitution of India.

(h) The word 'Dasavatharam' is not an intellectual property of the petitioner in the matter of usage of the same. The petitioner society came to be registered only in December, 2006, whereas the title 'Dasavatharam' was registered by the second respondent as early as 23.07.2005 and started production of the film. Therefore, the petitioner cannot have any protest or objection over usage of the title 'Dasavatharam'. Further, the title 'Dasavatharam' is an ancient religious and historical title and no one else, much less any religious society like the petitioner can have any objection for the usage of the said title for the film production. Thus, the counter affidavit of the second respondent sought for the dismissal of the writ petition.

8. Counter affidavit had been filed by Mr.K.S.Ravikumar, the Director of the film 'Dasavatharam', which in nutshell gives the following particulars:-

(a) The competent authority, viz., the first respondent, who after proper scrutiny, issued 'U' certificate to the subject film. Hence, the writ petition is not maintainable.

(b) Without actually knowing the entire story line and background events of the movie, watching only one or two clippings or scenes in the trailer, the averments made in the affidavit stating that the title itself ridicules the Hindu religious sentiments, is premature and misconceived. The film contains no offensive scenes, especially that of any clash between Saivaites and Vaishnavites. The story and the events depicted from the 12th century are part of the history of Tamilnadu. In fact, the incident has been referred to in the books published by the Tamilnadu Government and also in the works of renowned historians.

(c) In Tamil book titled Pirkala Chola Sarithiram part 2 at page 94, the incident of Vishnu's idol being laid on ocean is referred to. Similarly at page 349 of the book titled as "The Cholas" by the renowned historian, Mr.K.A.Nilakanta Sastri and published by University of Madras, a reference is made to removal of the shrine of Govindaraja from its place in Chidambaram. The same incident is referred to at page 314 of the Tamil book titled 'Tamil Nattu Varalaru Chola Peruventhar Kalam, Volume IV, Part II, published by the Government of Tamilnadu. Thus, the scene referred to in the affidavit of the petitioner is a historical fact. That the hero was tied to the idol before it was left in the ocean is a fiction added for the purpose of the film and the allegation in the affidavit that Sri Ramanujar is shown as tied to the idol is wrong. Not even one frame in the subject film that would even remotely hurt the religious sentiments of any group much less the sentiments of Vaishnavites.

(d) There is no scene where either Mr.Kamala Hassan or any other character in the film trampling on the mantra 'Om' or the sacred Bhagavat Gita. The story is not about the life of either Sri Ramanujachariar or the temple of Srirangam. Mr.Kamala Hassan does not play the role of Sri Ramanujachariar in the film. No scene depicts or tends to propagate violence.

(e) There is no necessity for removing any scenes from the subject film since they have already been scrutinised and certified by the first respondent and also there is no scene in the film, which offends any religious feelings in any way. In fact, there are characters belonging to the four major religions of our country, namely, Hindus, Christians, Muslims and Sikhs, who depict and personify the best qualities in human beings such as patriotism, supreme sacrifice, service to people, love towards fellow human beings etc. In fact, the core message of the film is that whenever human beings are in extreme trouble and seek the intervention of the Divine Power, Sri Vishnu answers the call and saves them from all trials and tribulations. In fact, Lord Govindaraja,

i.e., Sri Vishnu is stated to be and portrayed as the protector of people and is shown to prevent the great catastrophe thus, saving millions of life.

(f) There is no copyright over the word 'Dasavatharam'. There is no abuse of the word anywhere in the film. The word is common and equally respected by all Hindus. The title only signifies that the hero plays ten different characters in the subject film.

Thus the counter of the third respondent sought for the dismissal of the writ petition.

9. Mr. Swami Govinda Ramanuja Dasa, the President of the petitioner society in W.P.No.11983 of 2008 appeared in person and put forth his contentions. We have also heard Mr.R.Subramanian, learned counsel appearing for the petitioner in W.P.No.12929 of 2008, Mr.M.Ravindran, learned Additional Solicitor General of India, appearing for the first respondent, Mr.R.Shanmugam, learned counsel appearing for the second respondent and Mr.Ravi, learned counsel appearing for the third respondent in W.P.No.11983 of 2008.

10. Mr. Swami Govinda Ramanuja Dasa, the President of the petitioner society in W.P.No.11983 of 2008 submitted that:

(a) On 01.05.1008, the T.V. Channel telecast directly the release trailer in Kalaigiar Tholaikatchi with respect of the film 'Dasavatharam'. Some of the scenes in the said film were video recorded and scanned. He has received several phone calls from public who follow and embrace Hindu faith in connection with some of the offensive scenes telecast in the Tamil film 'Dasavatharam'. The general public, more so Vaishnavites in particular were very much agitated and offended by the said telecast. He has more emphasised on the following scenes, which according to him, are offending scenes:-

(i) violent clash between Saivaites and Vaishnavites

(ii) Mr.Kamaal Hassan stepping on Pranava Mandiram "Om" and tramping on Holy Bhagavat Gita

(iii) tying of Ramanujar with idol by Sri Ranga Ranganathar and pushing it into sea by Saivaites and presence of terrorist in sanctum sanctorum and substitute title of 'Dasavatharam' with any other suitable title and such other scenes.

(b) He has thus pleaded that if the offending scenes in the film 'Dasavatharam' are removed, there cannot be any objection for the release of the film.

11. Mr.R.Subramanian, learned counsel appearing for the petitioner in W.P.No.12929 of 2008 submitted that on two counts the picture hurts the sentiments of the people in their faith of Hindu religion, viz.,

- (i) use of term 'Dasavatharam' not connected to the movie;
- (ii) depicting certain things that are not true account of history.

He has elaborated his argument on those counts. According to him, the name 'Dasavatharam' is connected with Hindu religion and the same cannot be used for a film of this nature. The title will fool the public by making them to believe that the picture movie is a real 'Dasavatharam' as enshrined in the Hindu religious text books about the ten Avathars of God. The removal of Pallikonda Ranganathar and throwing of it into the sea is contrary to truth. By showing this scene, a hatred and conflict between Saivaites and Vaishnavites is sought to be created.

12. Mr.M.Ravindran, learned Additional Solicitor General of India, appearing for the first respondent submitted that:

(a) The committee had previewed the film 'Dasavatharam' and fully convinced that the film does not violate any of the Cinematographic Guidelines in its certified form and issued 'U' certificate.

(b) When once the certificate had been issued, even the first respondent cannot withdraw the Censorship Certificate. Hence, the relief sought for by the petitioner directing the first respondent to cut and remove the offending scenes in the film cannot be done.

(c) The first respondent has not certified any scene where the hero of the film Mr.Kamala Hassan stepping on Pranava Mantra and trampling on Holy Bhagavat Gita.

(d) Without viewing the film, the petitioners preferred these writ petitions, which is highly premature. The impact of any scene or any part of the film could be assessed only if the film is viewed by the petitioner society or its members.

13. Mr.R.Shanmugam, learned counsel appearing for the second respondent mainly contended that:

(a) The title 'Dasavatharam' is not an intellectual property of the petitioner in the matter of usage of the same:

(b) The first respondent had issued the Censorship Certificate after viewing the film, which will prove that there is no offending scene in the said film. The Censor Board had considered all aspects including the religious faith.

(c) There is no offending scene in the said film as projected by the petitioners.

(d) Without viewing the film, the petitioners have come forward with the present writ petitions on imaginary grounds.

(e) The second respondent had spent huge amounts for the production of the film and the same cannot be stalled by the petitioners on certain imaginary grounds, which are only an illusion on the part of the petitioners.

14. Mr.K.Ravi, learned counsel appearing for the third respondent mainly contended that:

(a) This film contains no offensive scenes especially that of any clash between the Saivaites and Vaishnavites.

(b) The incident referred to in several books published by the Government of Tamilnadu had been portrayed in the film.

(c) The story is not about the life of either Sri Ramanujachariar or the temple Srirangam. Mr.Kamala Hassam does not play the role of Sri Ramanujachariar in the film. No scene depicts or tends to propagate violence.

(d) There is no copyright over the word 'Dasavatharam'. The title only signifies that the hero plays ten different characters in the subject film.

15. We have considered the submissions made in this regard.

16. The first and foremost contention raised at the end of the petitioners is that the film 'Dasavatharam' contains certain offending scenes viz.,

(i) violent clash between Saivaites and Vaishnavites;

(ii) Mr.Kamala Hassan stepping on Pranava Mandiram "Om" and tramping on Holy Bhagavat Gita;

(iii) tying of Ramanujar with idol by Sri Ranga Ranganathar and pushing it into sea by Saivaites and presence of terrorist in sanctum sanctorum and substitute title of 'Dasavatharam' with any other suitable title and such other scenes.

17. In fact, the President of the petitioner society in W.P.No.11983 of 2008 submitted that if those scenes are removed, there cannot be any objection on the part of the petitioners for release of the said film 'Dasavatharam'. On the background of the said submission,

we have to see the counter affidavits filed by the respondents. It has been clearly set out in the counter affidavits that the film 'Dasavatham' contains no offensive scenes especially that of any clash between Saivaites and Vaishnavites. Secondly, it has been spelt out by the respondents in their counter affidavits that the hero of the film Mr. Kamal Hassan is not stepping on Pranava Mandiram "Om" and tramping on Holy Bhagavat Gita. Thirdly, Sri Ramanujachariar is not a character in the film. Therefore, the film does not depict as though Sri Ramanujachariar is tied with the idol of Lord Sri Ranganatha and being pushed into the sea. It would be useful to extract a portion of para 9 of the counter affidavit of the third respondent, the Director of the film, which reads as follows:-

" I reiterate that:

a) There are no violent clashes between Saivaites and Vaishnavities.

(b) Mr. Kamal Hassan does not step over "Om" or over the Holy Bhagavath Gita.

(c) Sri Ramanujachariar is not a character in the film, Mr. Kamal Hassan does not play the role of Sri Ramanujachariar in the film and the story is not about Sri Ranganathar or Srirangam. Therefore, the film does not depict as though Sri Ramanujachariar is tied with the idol of Lord Sri Ranganathar and being pushed into the sea and there is no depiction of terrorists entering the sanctum sanctorum of any temple.

18. It is needless to say that the other respondents have also filed counter affidavits in tune with the counter affidavit of the third respondent, the Director. Thus, the respondents asserted in their counter affidavits that the said film does not contain the alleged offending scenes. If such an assertion has been made by the respondents, could it be said still that the said offending scenes are there in the said film, especially in the background of the fact that the petitioners have not seen the said film and that the film has not been so far released.

19. As rightly pointed out by the learned Additional Solicitor General of India, appearing for the first respondent and the learned counsels appearing for respondents 2 and 3, the film is yet to be released for public exhibition and without viewing the film, the petitioners have approached this Court on surmises and presumption. The argument of the learned counsel appearing for the respondents thus appears to be well founded, especially when the counter affidavits of the respondents read that no such offending scenes are there in the film. The petitioners without viewing the film, cannot assert that there are offending scenes in the film and seek for removal of the said alleged offending scenes.

20. In this connection, it would be more useful if we extract certain portions of the counter affidavit of the Director of the film, which read as follows:-

" ... the film contains no offensive scenes, especially that of any clash between Saivaites and Vaishnavites. The story and the events depicted from the 12th Century are part of the History of Tamil Nadu. In fact, the incident has been referred to in the books published by the Tamilnadu Government and also in the works of renowned historians."

" ... There is no scene where either Mr.Kamal Hassan or any other character in the film trampling on the mantra "Om" or the sacred Bhagavat Gita. I further submit that the story is not about the life of either Sri Ramanujachariar or the temple of Srirangam. Mr.Kamal Hassan does not play the role of Sri Ramanujachariar in the film. No scene depicts or tends to propagate violence".

" ... The subject film does not propagate violence or ill feeling in any manner, whatsoever. In fact, there are characters belonging to the four major religions of our country, namely, Hindus, Christians, Muslims and Sikhs, who depict and personify the best qualities in human beings such as patriotism, supreme sacrifice, service to people, love towards fellow human beings etc. In fact, the core message of the film is that whenever human beings are in extreme trouble and seek the intervention of the Divine Power, Sri Vishnu answers the call and saves them from all trials and tribulations. In fact, Lord Govindaraja, i.e., Sri Vishnu is stated to be and portrayed as the protector of people and is shown to prevent the great catastrophe, thus saving millions of life... "

21. The above passages in the counter affidavit will make it clear that the Director of the film had asserted that the core message of the film is that whenever human beings are in extreme trouble and seek the intervention of the Divine Power, Sri Vishnu answers the call and saves them from all trials and tribulations. If this statement is taken as true, the grievance of the petitioners that the film affects the sentiments of Saivaites and Vaishnavites can only be an illusion and nothing more. If Lord Vishnu had been portrayed as Saviour of the people from all trials and tribulations, there cannot be any complaint or grievance on the side of the petitioners.

22. Secondly, the first respondent statutory body vested with the power to view the film and scrutinise the same before certifying it, has granted certificate, which cannot be lightly taken note of. More so, when a counter affidavit had been filed by the first respondent

saying that the film does not hurt the feelings of any sect of Hindus, the same cannot be taken lightly at this juncture before the film could be released.

23. The Censor Board, a high power body with a statutory mandate has given certificate for the film and that cannot be lightly taken. In A.I.R. 1980 SC 258 - Raj Kapoor v. State, the Supreme Court held that the certificate issued by the Censor Board is a relevant material and the following passage in the said judgment is usefully extracted here under:-

" May be, even a rebuttable presumption arises in favour of the statutory certificate but could be negated by positive evidence. An act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed".

24. Thirdly, the freedom of expression guaranteed under the Constitution of India more so Article 19(1) of the Constitution of India cannot be curtailed on mere belief, myth and fiction. In (1989) 2 Supreme Court Cases 574 - S.Rangarajan v. P.Sagjivan Ram, the objection to the film "Ore Oru Gramathil" came for consideration and the Hon'ble Supreme Court has observed as follows:-

" ... 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".

" 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 is 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."

" 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 "thing 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."

"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 governmental 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 views on any issue."

" 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."

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 quicksand 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."

25. In yet another decision reported in 2006 (4) CTC 193 - Sony Pictures Releasing of India Ltd., v. The State of Tamil Nadu, Justice Prabha Sridevan, while dealing with the film "The Da Vinci Code" had elaborately considered several issues including the fundamental right of freedom of expression and the provisions under the Cinematograph Act, 1952 and the following passages in this judgment are usefully extracted here under:-

" Next, we must see whether the impugned order infringes Article 19(1)(a) or whether it is protected by Article 19(2). Freedom of expression occupies a very special position among the constitutional guarantees. The right of the State to exert its power of regulation is hemmed by Article 19(2). It does not include intolerance to expression of one's views in the market place. There will be periods of renaissance in history only when there is free inflow and outpouring of ideas, ideas which may even run counter to the dominant, traditional opinion must have their free play, and this is the hypothesis on which free speech is built, that speech can rebut speech and propaganda will answer propaganda.

The issue in the present case is not whether these alternative assumptions are true. The issue is whether there can be a work of art of literature or a film which propounds such interpretations and whether the public have the right to decide whether to accept or reject such alternative interpretation. The issue is whether the petitioner's right to freedom of expression and equally, a person's right to see the film can be curtailed by the State ostensibly on the ground that a section of the people does not accept that the petitioners have such freedom of expression. The issue is whether the State is bound to protect the person whose fundamental right is sought to be violated by people who threaten to breach peace, or whether the State will mutely watch such threats. All these issues must be answered in favour of the petitioners.

The persons who object to the film, are not involuntarily and forcibly exposed to the contents of the film. They must buy the tickets to see the film. If someone is offended by what he knows to be the film's content, he is free to avoid watching the film. It is doubtful whether the objectors or the authorities have even seen the film."

26. Thus, we are constrained to come to the conclusion that the apprehension on the side of the petitioners at this stage, before they could view the film, could only be on surmise and without full proof that there are certain scenes, which will affect the Hindus more

particularly Vaishnavites. Freedom of expression guaranteed under Article 19(1) of the Constitution of India cannot be curtailed on mere assumption of the petitioners that the said film contains certain scenes which will hurt the sentiments of the Hindus more so the Vaishnavites.

27. The fourth aspect, which has been raised by the petitioners is that the title 'Dasavatharam' is a sacred name, which is well known and wholly revered by all Hindus particularly Vaishnavites. There is no intellectual property in the use of title 'Dasavatharam'. Admittedly, there is no copyright over the word 'Dasavatharam'. The persons, who view the film are not so illiterate to take a view that it is ten Avadhars of Lord Vishnu. We are confident that the people at large will be knowing that the hero of the film Mr. Kamala Hassan is acting in ten different roles and that is why the film is named as 'Dasavatharam'. Further more, a wide publicity has been given about the production of the said film 'Dasavatharam' even in the year 2005 and people at large will be knowing that the hero of the film will be acting in ten roles and hence, the film is named as 'Dasavatharam'. The usage of the work 'Dasavatharam' cannot at any stretch of imagination would affect the sentiments of the Hindus, more particularly the Vaishnavites.

28. Thus, on the foregoing discussions made by us, we could arrive at the following irresistible conclusions:-

(a) The title of 'Dasavatharam' is an ancient religious and historical title and nobody including the petitioners can have any objection for the usage of the said title by the film producer especially when it is not intellectual property and there is no copyright over the said word. The title at best may signify that the hero of the film plays ten different characters in the said film. Further more, when it has been asserted by respondents 2 and 3 that there is no abuse of word anywhere in the film, we are constrained to hold that the use of the word 'Dasavatharam' at no stretch of imagination could affect the sentiments of the Hindus, more particularly Vaishnavites.

(b) When there is an assertion in the counter affidavit of the respondents that there is no violent clash between Saivaite and Vaishnavites and the hero does not step over Pranava Mandiram "Om" or over the Holy Bhagavat Gita and Sri Ramanujachariar is not a character in the film and that the film does not depict as though Sri Ramanujachariar is tied with idol of Lord Sri Ranganathar and the tying of hero with an idol before it was left in the ocean, is a fiction out of imagination and development for the purpose of the film and nothing else, the plea of the petitioners that such offending scenes should be removed from the film 'Dasavatharam' can only be an imaginary apprehension on the part of the petitioners.

(c) The petitioners who have not viewed the film cannot assert that such offending scenes are part of the said film especially in the backdrop of the counter affidavits filed by the respondents that such offending scenes are not there in the film.

(d) The freedom of expression guaranteed under the Constitution of India more so Article 19(1) of the Constitution of India cannot be curtailed on mere belief, myth and fiction.

29. Before parting with the case, we are constrained to make the following observations:-

The movie is a powerful means of communication which attracts larger attention and mass audience. It cannot allow itself to propagate hatred among the people of all walks of life including the religion oriented people. Certain amount of restraint by them is the need of the hour. Though the producers of the films have got freedom of expression, they should see to it that such freedom does not affect the sentiments of the people of any religion for that matter. The unity of the people shall be the most paramount consideration of everybody, more particularly, the persons who produce the films. The responsibility of the producers of the films and T.V. serials is more so since as stated already it attracts larger people. "Amar Bharat Amar Bharat" a book in Bengali on Swamiji's message to India was published in English wherein Swami Vivekananda's words have been quoted. The relevant passage is extracted hereunder, which will be more appropriate in the present context:-

"The Hindu man drinks religiously, sleeps religiously, walks religiously, marries religiously, robs religiously That shows that the vitality of the race, the mission of the race is religion; and because that has not been touched, therefore that race lives.

Every other problem in life must be subordinated to that one principal theme (religion). That is also the law of harmony in music. There may be a nation whose theme of life is political supremacy; religion and everything else must become subordinate to that one great theme of its life. But here is another nation whose great theme of life is spirituality and renunciation, whose one watchword is that this world is all vanity and a delusion of three days."

Thus, let them not throw bomb-shells of hatred or evil thought. We hope that the film shall not carry anything which would wound any sector of Hindus. We also hope that after seeing the film, the petitioners should feel that their apprehension is without any substance.

30. Thus, in fine, we are unable to grant the relief that has been sought for by the petitioners and the writ petitions are liable to be dismissed and accordingly dismissed. No costs. Consequently, connected petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sbi

To

1.The Censor Board,
Shastri Bhavan, Chennai-6.

2. Secretary to Government,
Home Department, Govt. of
Tamil Nadu, Secretariat, Chennai.

2 cc To The Government Pleader, SR.27435 & 27172.

1 cc To Mr.R.Subramaniam, Advocate, SR.27431.

1 cc To Mr.Swami Govindaramanuja Dasa, Party-in-Person, SR.27440.

2 cc To Mr.R.Shanmugam, Advocate, SR.57408, 27409.

1 cc To Mr.C.Gurulingam, Advocate, SR.27406.

1 cc To M/s.Rugan & Arya., Advocate, SR.27407.

W.P.Nos.11983 and
12929 of 2008

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