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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 6th April, 2023

+ **W.P.(C) 445/2023 and CM APPL. 1752/2023, 16398/2023**

AKSHAT BALDWA & ORS.

..... Petitioners

Through: Mr. Aditya Gupta and Mr. Rahul Bajaj, Advocates (M: 9890281068).

versus

YASH RAJ FILMS & ORS.

..... Respondents

Through: Mr. Abhishek Malhotra, Ms. Sapna Chaurasia, Mr. Harsh Buch, Ms. Srishti Gupta and Ms. Shilpa Gamnani, Advocates for R-1. (M: 8806230299)

Mr. Chetan Sharma, ASG with Mr. Ravi Prakash, CGSC, Mr. Farman Ali, M. Aman Rewaria, Ms. Usha Jamnal & Ms. Astu Khandelwal, Adv. for R-2, 2A & 3 (M-8744956276)

Ms Sneha Jain, Mr. Devvrat Joshi, and Mr Angad S Makkar, Advocates for R-4 (M: 9897896284).

Mr. Nitin Sharma, Ms. Deepika Pokharia and Mr. Kuber Mahajan, Advocates for R-5 (M: 9315574461)

Mr. Kunnal, Advocate.

Mr. Pranay Sarthi Advocate for R6 (M:8826457307)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been preferred by four Petitioners, out of whom, Petitioner Nos. 1, 2 and 4 are visually impaired and Petitioner No.3

is hearing impaired. The Petitioners had filed the present writ petition seeking reliefs in respect of the feature film ‘*Pathaan*’ and praying for directions to incorporate sub-titling (same language), sub-titling (otherwise), captioning and audio-description for the movie ‘*Pathaan*’. In addition, one of the prayers is for notification of the standards of accessibility to be implemented in films in order to make film viewing enjoyable for visually and hearing impaired persons.

3. The Respondents who were impleaded were the producer of the film Yash Raj Films, two Ministries i.e. Ministry of Information & Broadcasting and Ministry of Social Justice & Empowerment, Department of Empowerment of Persons with Disabilities and Amazon Sellers Services Private Ltd.

4. The petition was listed on 16th January, 2023 on which date, this Court had considered the submissions made on behalf of the Petitioners as also the Respondents. The provisions of the Rights of Persons with Disabilities Act, 2016 (*hereinafter ‘RPWD Act, 2016’*) were also considered. The Court had thereafter directed as under:

“12. Heard. This Court is of the opinion that the present petition raises very important issues as to the accessibility to various modes of entertainment for the hearing and visually impaired persons. A reading of Section 42 of the RPWD Act, 2016 shows that the Government has an obligation to take measures to ensure that all content is available in formats accessible to persons with disabilities. The said provision is set out below:

“42. Access to information and communication technology.—The appropriate Government shall take measures to ensure that,—

- (i) all contents available in audio, print and electronic media are in accessible format;
- (ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;
- (iii) electronic goods and equipment which are meant for every day use are available in universal design.”

13. In the context of films, the measures that can be taken by film producers to make them accessible to the hearing and visually impaired persons, are as under:

- **Audio description** - which implies the verbal depiction of key visual elements in media and live productions. This involves description of the visuals on screen to enable imagination by the hearing impaired;
- **Subtitling** - which provides a text alternative for the dialogue of video footage – the spoken words of characters, narrators and other vocal participants, in the original language itself, as also, in the dubbed language in case of dubbed movies; and
- **Closed Captions** - which not only supplement dialogue but other relevant parts of the soundtrack – describing background noises, phones ringing, and other audio cues that need describing,

These features would be integral to the enjoyment of films for persons with disabilities.

14. In view of the above, special measures would have to be taken for the hearing and visually impaired persons, inasmuch as the experience of watching a film in a movie theatre cannot be denied to persons with disabilities. This is particularly true in view of the fact that the technology for the same is readily

available. As submitted by Mr. Bajaj, several films in the past, such as *Dangal*, *Black*, *Munna Bhai MBBS*, are stated to have incorporated audio descriptions, subtitles and closed captions for the hearing and visually impaired persons.

15. Thus, considering the reliefs sought, there are two aspects that would be required to be considered:

- i. Firstly, directions insofar as the film 'Pathaan' is concerned, to make the said film comply with the prescribed accessibility standards, to the extent possible; and
- ii. Secondly, an overall solution that has to be found to ensure the implementation of the statutory provisions and other directions, to make films disabled-friendly for the hearing and visually impaired."

5. In the background of the above observations made by the Court, the decisions of the Supreme Court in ***Rajive Raturi v. Union of India*, [(2018) 2 SCC 413]** and ***Vikash Kumar v. UPSC and Ors.*, [2021 SCC Online SC 84]** were also considered. Finally, the following interim directions were issued:

"18. A perusal of the above judgments would show that accessibility is crucial and is enforceable as a legal right. Even private parties have to ensure that 'reasonable accommodation' measures are taken in order to enable greater accessibility for the hearing and visually impaired persons. Though accessibility in the case of ***Rajive Raturi (supra)*** is in the context of access to buildings, transportation etc., accessibility to information, technology and entertainment, is equally important. A hearing or visually impaired person, may get easy physical access to a film theatre but may not be able to enjoy the film at all, if the measures to make

it enjoyable are not taken by the other stakeholders, including producers, theatre managers, OTT platforms, etc. The State has an obligation to ensure that all steps, that are reasonably possible, are taken in this direction.

Interim Directions:

19. Thus, in the interim, it is directed as under:

- a. Insofar as the theatrical release of the film 'Pathaan' is concerned, since the said film is slated for release on 25th January, 2023, no directions are being passed.*
- b. However, insofar as the release of the film 'Pathaan' on the Respondent No.4's 'Amazon' OTT platform is concerned, the following directions are issued:*
 - i. The Respondent No.1 - Producer shall prepare the audio description, the subtitles in the Hindi language, as also, the closed captions in both English and Hindi languages, and submit that same to the CBFC for approval, by 20th February, 2023.*
 - ii. Upon the same being submitted, the CBFC shall consider the re-certification of the film 'Pathaan', along with the audio description, the subtitles in the Hindi language, and the closed captions in both English and Hindi languages.*
 - iii. CBFC shall take a decision on re-certification of the said film by 10th March, 2023.*
- c. If the Respondent No.1 - Producer wishes to enable greater accessibility for the film 'Pathaan', in theatres, it may contact the operators of the mobile applications 'XL Cinema' and 'Shazacin', or other similar applications, if any, to explore the possibility of*

providing audio description, subtitles, and closed captions.

d. Insofar as the issue of having an overall and holistic solution to the questions raised in the present petition is concerned, it is deemed appropriate to implead the Indian Broadcasting and Digital Foundation (IBDF) as Respondent No.5 in the present petition. In addition, the Indian Motion Pictures Producers' Association (IMPPA) shall also be impleaded in this matter as Respondent No.6. Issue notice to the newly impleaded Respondent Nos.5 and 6, without payment of process fee, through the following particulars:

.....

e. Considering the nature of the reliefs sought in this matter, the Ministry of Electronics and Information Technology (MeitY) is also impleaded as Respondent No.2(a). Mr. Farman Ali, Id. Counsel accepts notice on behalf of Respondent Nos. 2(a) as well.”

6. On the said date, as can be seen above, the Court had also impleaded further Respondents i.e. Indian Broadcasting and Digital Foundation ('IBDF') and Indian Motion Pictures Producers' Association ('IMPPA') as Respondent No. 5 and Respondent No.6, respectively. Further, considering the nature of reliefs sought in this matter, the court directed the Ministry of Electronics and Information Technology (MeitY) to be impleaded as Respondent No. 2(a). The amended memo of parties has now been placed on record. Counter affidavits have been filed by Yash Raj Films and Amazon Seller Services Private Ltd. The Ministry of Information and Broadcasting has also filed its status report.

7. As per the Respondents' pleadings and submissions made by parties,

the position is that in respect of the film '*Pathaan*', in the OTT release, the audio description as also the same language subtitling and the close captioning has been provided. Thus, the requisite compliances have been made qua the film '*Pathaan*'. The issue that now remains to be considered is the overall solution that needs to be found in respect of implementation of the statutory provisions and other directions to make accessibility of films to the visually and hearing impaired.

8. In this context, submissions have been made on behalf of the Petitioners and the other parties today. Mr. Bajaj, Id. Counsel has again emphasised the fact that reasonable accommodation for persons with disabilities ought to be provided so long as there is no disproportionate or undue burden upon the parties concerned. This obligation exists even on private players as recorded in the order dated 16th January 2023. Id. Counsel submits that in contrast with the budget of the films which are released in India, the cost that would be involved in providing these features would be very low. As per his submission, the cost could be around Rs.2,00,000/- for including these features in a film. Accordingly, he submits that Respondent No.2 ought to be directed to give a mandate and not merely non-binding circulars which are not implemented by producers. He further submits that reasonable exceptions can also be recognised by the Ministry based on budget of the film, viewership, technical non-feasibility if any. However, on a broad basis, the accessibility features ought to be directed to be implemented by all producers and other platforms which make these films accessible.

9. Insofar as the remedies are concerned, it is his submission that at the time of certification of the films itself, the Central Board of Film

Certification ('CBFC') ought to insist that such features would be mandatory for the purpose of implementing the provisions of the RPWD Act, 2016 and the Rules.

10. Reference is made to Rule 15 of the Rights of Persons with Disabilities Rules, 2017 wherein there was an obligation on the Central Government to ensure that the standard of accessibility in respect of other services and facilities ought to be specified within a period of six months from the date of notification of the rules.

11. Finally, Id. Counsel relies upon the judgment of the 'Committee on the Rights of Persons with Disabilities' dated 23rd September 2023 wherein a complaint was filed by an Australian national before the United Nations Committee. The said Committee recognises that there is an obligation on behalf of the State parties to provide and implement the various provisions of the 'United Nations Convention on the Rights of Persons with Disabilities' (UNCRPD). Specific reference is made to paragraphs 10.9, 10.10 and 10.11.

12. On behalf of Yash Raj Films, Mr. Abhishek Malhotra, Id. Counsel appearing submits that the producer has complied with the order passed by this Court. However, he submits that the costs which were incurred for the movie 'Pathaan' was approximately Rs.6,00,000/- plus GST.

13. On behalf of Amazon, Ms. Sneha Jain, Id. Counsel submits that most of the films which are screened on the OTT platform of Amazon have these accessibility features. However, only in those cases where the content provider itself does not provide these features, the platform is unable to provide the features to the viewers. She further submits that Amazon intends to always improve its services and has provided dedicated emails

where suggestions can be placed for improvement of the services.

14. On behalf of the Ministry of Information and Broadcasting, it is submitted by Mr. Ali that the necessary steps were taken pursuant to the order dated 16th January, 2023. The addition of audio-description and subtitles in Hindi as also close captioning in both Hindi and English were duly incorporated for the film 'Pathaan' on the OTT platform. In addition, it is submitted by Id. Counsel that directions have already been issued to producers through a circular dated 1st October, 2019 to implement the requisite accessibility features in respect of all films. Such communication has been issued to various producers' associations.

15. On behalf of the newly added Respondents, time is sought to file the counter affidavits.

16. A perusal of the submissions made above, the pleadings filed on record and specifically the circular dated 1st October, 2019 issued by the Ministry of Information and Broadcasting would show that insofar as the obligation to enforce and implement the accessibility for persons with disabilities is concerned, there is no ambiguity or doubt. The said circular dated 1st October, 2019 is set out below for the sake of ready reference.

***“No. M-11021/29/2018-DO(FC)
Government of India
Ministry of Information & Broadcasting
'A' Wing, Shastri Bhawan, New Delhi-110001***

New Delhi, the 1st October 2019

***Subject: Accessibility of Cinema to all including
Persons with Disabilities through Audio Description***

It is a matter of concern that persons with disabilities are unable to enjoy recreational activities of media and entertainment due to challenges in vision, hearing or comprehension, resulting in their exclusion. The Rights of Persons with Disabilities Act, 2016 stipulates that the Government shall take measures to develop technology, assistive devices and equipment to facilitate access and inclusion for persons with disabilities in recreational activities.

2. The Ministry of Information and Broadcasting has received several representations for making cinema more accessible to Persons with Disabilities, by means of Audio Description and Closed Captioning. Audio Description is the auditory narration of visual representations in a film. During gaps in dialogue, it describes visual elements such as scenes, settings, actions and costumes. Thus, an audio description enhances the film watching experience of a visually impaired person.

3. It is, therefore, requested to motivate and persuade your associated members to make Audio Description a part of the production and distribution process of a film itself. Such measures will make cinema viewing more inclusive and promote non-discrimination of persons with disabilities in public places like theatres

*Sd-
(Dhanpreet Kaur)
Deputy Secretary to the Government of India
Tele: 23382487 ”*

17. The above circular has been sent to various ‘Film Producers’ Associations’ namely:

- i. Indian Film and TV Producers’ Council.
- ii. Western India Film Producers Association.
- iii. The Film & Television Producers Guild of India Ltd.

- iv. Indian Motion Picture Producers' Association.
- v. Motion Picture Dist. Association (India).
- vi. Film Federation of India.
- vii. The South Indian Film Chamber of Commerce.

18. The material which has been relied upon by Id. Counsel for the Petitioner namely, the UNCRPD as also the decision by the Committee in the case of Australia, leave no manner of doubt that the implementation of the Circular ought to be made on an urgent basis inasmuch as, though the Government has directed the inclusion of such features, clearly the same is not being implemented across the board by all producers and platforms. There is, thus, an immediate need to enable incorporation of these features, bearing in mind the Rights of Persons with Disabilities Act and Rules which defines public services and facilities as under:

*“**Section 2 (x):** “public facilities and services” includes all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping or marketing, religious, cultural, **leisure or recreational**, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, transportation;”*

19. A perusal of the above provision would show that public services and facilities has been defined in a very broad manner and include leisure or recreational facilities as well. In view thereof, this Court is of the opinion that while the directions in respect of the movie ‘*Pathaan*’ have been implemented, a broad stakeholder consultation would be required in order to ensure that the RPWD Act as also the circular issued on 1st October, 2019

are implemented both in letter and spirit.

20. Accordingly, it is directed that the Ministry of Information and Broadcasting along with the other relevant Ministries may hold a stakeholder consultation with the following sets of stakeholders:

- i. Film producers both in national and regional languages.
- ii. OTT platforms which are operating in India.
- iii. Television Broadcasters- Indian Broadcasting & Digital Foundation (IBDF)/News Broadcasters & Digital Association (NBDA)
- iv. Association of theatre owners
- v. Organizations for disabled persons.
- vi. Film Distributors
- vii. Service providers who run the delivery platforms in theatres such as XL Cinema.
- viii. Bureau of Indian Standards
- ix. Manufacturers of hardware and
- x. Software developers of accessibility features.
- xi. Any other stakeholders as the Ministry may consider appropriate.

21. In the stakeholder consultation, discussions would be held in respect of the manner in which the provisions of the RPWD Act and Rules as also the circular which has been issued on 1st October, 2019 can be implemented. The Ministry is free to frame guidelines in this regard and the draft guidelines may be placed on record before the Court by the next date of hearing.

22. The Ministry of Information and Broadcasting may also bear in mind the draft '*Accessibility Standards for Television Programmes for Hearing*

Impaired' which have been put up for stakeholder consultation vide notice dated 3rd November, 2021, while suggesting the framework of the future guidelines. The Bureau of Indian Standards has published standards on accessibility of ICT products and services (IS17802) which should also be contemplated while considering the framework of the draft proposed guidelines.

23. Let the stakeholder consultation be concluded by the end of August, 2023 and the status report be filed by 10th September, 2023.

24. Mr. Kunnal Prasad, from 'XL Cinema' at this stage submits that his firm has already provided these features for twelve feature films.

25. For the stakeholder consultation, the Ministry shall consider having sign language interpretation in order to enable the hearing impaired persons to join the said stakeholder consultation.

26. Insofar as the hearing of this matter before this Court is concerned, Mr. Bajaj may provide the details of the sign language interpreter/s whose services can be engaged for the hearing on the next date. The Registrar General may on the administrative side consider if the said interpreter could be arranged for the next date of hearing in this matter.

27. List on 26th September, 2023 at 3:30 p.m.

28. This is a part heard matter.

**PRATHIBA M. SINGH
JUDGE**

APRIL 6, 2023

dj/rp