

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 16TH DAY OF MARCH 2023 / 25TH PHALGUNA, 1944

WP(C) NO. 26210 OF 2019

PETITIONER:

ATHENA SOLOMON.K, AGED 23 YEARS
D/O. TOM THOMAS, KADAPRAYIL HOUSE, THAMBALAMANNA P.O,
THIRUVAMBADY, KOZHIKODE DISTRICT, PIN-673 603

BY ADV MANAS P HAMEED

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY, GOVERNMENT OF INDIA, NEW DELHI-110 001
- 2 GOVERNMENT OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, TRIVANDURM-695 001
- 3 DEPARTMENT OF TELECOMMUNICATIONS, REPRESENTED BY ITS SECRETARY, GOVERNMENT OF INDIA, SANCHAR BHAWAN, 20 ASHOKA ROAD, NEW DELHI -110 001
- 4 TELECOM REGULATORY AUTHORITY OF INDIA LTD. (TRAI) REPRESENTED BY ITS CHAIRMAN, MAHANAGAR DOORSANCHAR BHAWAN, JAWAHARLAL NEHRU MARG (OLD MINTO ROAD), NEW DELHI-110 002
- 5 THE OFFICIAL IN -CHARGE, COMPUTER EMERGENCY RESPONSE TEAM, MINISTRY OF COMMUNICATIONS, GOVERNMENT OF INDIA, ELECTRONICS NIKETAN, CGO COMPLEX, LODHI ROAD, NEW DELHI-110 003
- 6 THE DIRECTOR GENERAL OF POLICE KERALA, POLICE HEADQUARTERS, TRIVANDRUM-695 010
- 7 CYBERDOME KERALA POLICE, REPRESENTED BY ITS NODAL OFFICER, POLICE HEADQUARTERS, TRIVANDRUM-695 010

SRI.JAISHANKAR V.NAIR, CGC
SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
SRI.K.R.RAJKUMAR, C.G.C.
SMT.MINI GOPINATH, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

S.Manikumar, C.J

Reliefs sought for in this Public Interest Litigation are as follows:-

“I. Issue a writ of mandamus or any other writ or direction in the nature thereof directing the respondent authorities to discharge their executive, statutory and all other obligations to take steps to block the access of the internet based mobile/desktop application named 'Telegram' in India.

II. Issue a writ of mandamus or any other writ or direction in the nature thereof directing the respondent authorities to discharge their executive, statutory and all other obligations to ensure that, all the internet based mobile/desktop applications are operating in India only by complying with the existing laws of the Country.”

2. Short facts leading to the filing of this writ petition are as follows:-

Petitioner, a public spirited person, is aggrieved by the circulation of inappropriate obscene and vulgar sexual contents featuring women and children especially pornography involving children, promoted through the internet based mobile and desktop

application 'Telegram'. According to her, 'Telegram' is also used for promoting international terrorism as well as for creating civil disruptions and that it has no nodal officer or a registered office in India and it is operating without license from any authorities and the investigating agencies are unable to initiate proper investigation or to trace out the culprits since it provides a user not to disclose his identity. Hence, this writ petition is filed.

3. On 17.02.2023, we passed the following order:-

“ On this day, when the matter came up for hearing, inviting the attention of this Court to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Mr. Jaishankar V. Nair, learned Central Government Counsel, submitted that Rules have been framed, explaining what is meant by grievance and grievance officer.

2. In this context, Rules 2(j) and 2(k) of the abovesaid Rules are reproduced:-

(j) ‘grievance’ includes any complaint, whether regarding any content, any duties of an intermediary or publisher under the Act, or other matter pertaining to the computer resource of an intermediary or publisher, as the case may be.

(k) 'Grievance Officer' means an officer appointed by the intermediary or the publisher, as the case may be, for the purposes of these rules."

3. Posed with the question as to whether any grievance officer has been appointed by Telegram, learned Central Government Counsel seeks time to get instructions.

On the other hand, Mr.Manas P.Hameed, learned counsel for the petitioner, submitted that no such officer is appointed in India.

Post after one week.”

4. Pursuant to this Court's order dated 17.02.2023, Mr.Jaishankar V Nair, learned Central Government Counsel, has filed a statement.

5. We have gone through the statement. In paragraph No.8, it is stated that clause (a) of sub-rule (2) of Rule 3 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 provides that the intermediary shall publish the name and contact details of the Grievance Officer as well as the mechanism by which a user or victim may complain against violation of the provisions of the said rules.

6. It is further stated that said rule also provides that the Grievance Officer shall acknowledge the complaint within 24 hours and dispose of the same within 15 days of its receipt and receive and acknowledge any order, notice or direction issued by the appropriate Government, any competent authority or a court of competent jurisdiction.

7. For brevity, averments in the statement dated 15.03.2023 filed on behalf respondent No.1 are reproduced:

“1. This statement is filed based on the instructions received from the Scientist E, Electronics Niketan, Ministry of Electronics and Information Technology (MeitY), New Delhi and as directed by this Court on 17.02.2023. This statement is filed without prejudice to the Rights of the 1st Respondent to file an additional Statement/Counter Affidavit in the matter.

2. It is submitted that the Central Government has notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021). It supersedes the earlier Information Technology (Intermediaries Guidelines) Rules, 2011 and has been last amended on 28.10.2022. A true copy of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is produced herewith and marked as Annexure R1(a).

3. It is humbly submitted that, Rule 3 of the said “IT Rules, 2021” provides that an intermediary shall observe due diligence specified in the rule while discharging its duties.

4. It is humbly submitted that, as per clause (a) of sub-rule (1) of rule 3 of the IT Rules, 2021, an intermediary shall prominently publish on its website, mobile-based application or both, as the case may be, the rules and regulations, privacy policy and user agreement in English or any language specified in the Eighth Schedule to the Constitution for access or usage of its

computer resource by any person in the language of his choice and ensure compliance of the same; observe due diligence by publishing on its website, mobile-based application, or both, as the case may be, the rules and regulations, privacy policy and user agreement for access or usage of its computer resource by any person.

5. That as per clause (b) of sub-rule (1) of rule 3 *ibid.*, an intermediary shall make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that, —

i. belongs to another person and to which the user does not have any right;

ii. is obscene, pornographic, pedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or promoting enmity between different groups on the grounds of religion or caste with the intent to incite violence;

iii. is harmful to a child;

iv. infringes any patent, trademark, copyright or other proprietary rights;

v. deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature;

vi. impersonates another person;

vii. threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognizable offence, or prevents investigation of any offence, or is insulting other

nation;

viii. contains a software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;

ix. violates any law for the time being in force.

6. It is submitted that if the information alleged by the petitioner falls under any of the said sub-clauses, the petitioner may approach the Grievance Officer of the intermediary platform seeking the removal of such information.

7. It is submitted that as per clause (c) of sub-rule (1) of rule 3 *ibid.*, an intermediary shall periodically inform its users, at least once every year, that in case of non-compliance with rules and regulations, privacy policy or user agreement for access or usage of the computer resource of such intermediary, it has the right to terminate the access or usage rights of the users to the computer resource immediately or remove non-compliant information or both, as the case may be.

8. It is submitted that as per clause (a) of sub-rule (2) of rule 3 *ibid.*, provides that the intermediary shall publish the name and contact details of the Grievance Officer as well as the mechanism by which a user or victim may complain against violation of the provisions of the IT Rules, 2021. It further provides that the Grievance Officer shall acknowledge the complaint within 24 hours, dispose of the same within 15 days of its receipt, and receive and acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority, or a court of competent jurisdiction.

9. It is submitted that clause (b) of sub-rule (2) of rule 3 *ibid.* provides that the intermediary shall, within 24 hours from the receipt of a complaint under the sub-rule, in relation to any content which is *prima facie* in the nature of any material which exposes the private area of the complainant, shows the complainant in full or partial nudity or shows or depicts him/her in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of the complainant, take all reasonable and practicable measures to remove or disable access to such content hosted, stored, published or transmitted by it.

10. It is submitted that clause (v) of sub-rule (1) of rule 2 *ibid.* defines “significant social media intermediary” (hereinafter referred to as “SSMI”) to mean a social media intermediary having a number of registered users in India above such threshold as notified by the Central Government. The Central Government, *vide* its notification dated 26.2.2021 issued under the said clause (v) of sub-rule (1) of rule 2 *ibid.*, has notified 50 lakh users as the threshold for an intermediary to qualify as an SSMI. Rule 4 *ibid.* provides that in addition to the due diligence observed under rule 3, an SSMI shall observe the additional due diligence specified in rule 4 while discharging its duties.

11. It is submitted that sub-rules (1) to (3) of rule 4 *ibid.* provide that an SSMI shall observe, *inter alia*, the following additional due diligence while discharging its duties:

- (a) Appoint a Chief Compliance Officer;
- (b) Appoint a nodal contact person to coordinate with law enforcement agencies 24x7 on their orders or

requisitions; and

Appoint a Resident Grievance Officer responsible for the functions referred to in sub-rule (2) of rule 3.

12. It is submitted that apart from making a complaint to the intermediary-appointed Grievance Officer, the petitioner can also lodge a complaint with the law enforcement agency or the cybercrime cell having jurisdiction in respect of any cognizable offence committed under IPC or any other applicable law. The petitioner can also report a cybercrime on the Cybercrime Reporting Portal (www.cybercrime.gov.in) launched by the Ministry of Home Affairs, or on the associated toll-free helpline number 1930. Complainants can also report anonymously on the portal if they do not want to disclose their identity. Through the portal, the National Crime Records Bureau too is associated with the work of cybercrime prevention against women and children.

13. It is submitted that as stated above, provision exists under law for the aggrieved person to pursue removal of content broadly, the following options are available to an individual aggrieved by the hosting of unlawful content on an intermediary platform for pursuing removal of the same or action against the intermediary: (a) File a complaint to the Grievance Officer of the intermediary platform; and/or (b) Lodge a complaint with the law enforcement agency having jurisdiction in respect of a cognizable offence or on the Cybercrime Reporting Portal (www.cybercrime.gov.in or toll-free helpline 1930); and/or (c) Approach a competent court of law for the relief(s) sought.

14. It is submitted that the contact details of the

grievance officer of Telegram are available in the URL (<https://telegram.org/faq>) In the aforesaid premises and in the interest of Justice, equity and good conscience, it is most respectfully prayed that this Hon'ble Court may be pleased to accept the above submissions as part of the records.”

8. In this context, it is apposite to extract rules referred to, by respondent No.1, as hereunder:

“The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

In exercise of the powers conferred by sub-section (1), clauses (z) and (zg) of sub-section (2) of section 87 of the Information Technology Act, 2000 (21 of 2000), and in supersession of the Information Technology (Intermediaries Guidelines) Rules, 2011, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:—

Rule 2(1)(j): ‘grievance’ includes any complaint, whether regarding any content, any duties of an intermediary or publisher under the Act, or other matters pertaining to the computer resource of an intermediary or publisher, as the case may be.

Rule 2(1)(k): ‘Grievance Officer’ means an officer appointed by the intermediary or the publisher, as the case may be, for the purposes of these rules.

Rule 2(1)(v): ‘significant social media intermediary’ means a social media intermediary having number of registered users in India above such threshold as notified by the Central Government;

Rule 3. (1) Due diligence by an intermediary: An intermediary, including social media intermediary and significant social media intermediary, shall observe the following due diligence while discharging its duties, namely:—

(a) the intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the rules and regulations, privacy policy and user agreement in English or any language specified in the Eighth Schedule to the Constitution for access or usage of its computer resource by any person in the language of his choice and ensure compliance of the same;

(b) the intermediary shall inform its rules and regulations, privacy policy and user agreement to the user in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice and shall make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that,—

(i) belongs to another person and to which the user does not have any right;

(ii) is obscene, pornographic, paedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or promoting enmity between different groups on the grounds of religion or caste with the intent to incite violence;

(iii) is harmful to child;

(iv) infringes any patent, trademark, copyright or other proprietary rights;

(v) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any misinformation or information which is patently false and untrue or misleading in

nature;

(vi) impersonates another person;

(vii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence, or prevents investigation of any offence, or is insulting other nation;

(viii) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;

(ix) violates any law for the time being in force;

(c) an intermediary shall periodically inform its users, at least once every year, that in case of non-compliance with rules and regulations, privacy policy or user agreement for access or usage of the computer resource of such intermediary, it has the right to terminate the access or usage rights of the users to the computer resource immediately or remove non-compliant information or both, as the case may be;

Rule 3(2): Grievance redressal mechanism of intermediary: (a) The intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user or a victim may make complaint against violation of the provisions of this rule or any other matters pertaining to the computer resources made available by it, and the Grievance Officer shall

(i) acknowledge the complaint within twenty-four hours and resolve such complaint within a period of fifteen days from the date of its receipt:

Provided that the complaint in the nature of request for removal of information or communication link relating to clause (b) of sub-rule

(1) of rule 3, except sub-clauses (i), (iv) and (ix), shall be acted upon as expeditiously as possible and shall be resolved within seventy-two hours of such reporting;

Provided further that appropriate safeguards may be developed by the intermediary to avoid any misuse by users;

(ii) receive and acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority or a court of competent jurisdiction.

(b) The intermediary shall, within twenty-four hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in relation to any content which is prima facie in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it:

Rule 4. Additional due diligence to be observed by significant social media intermediary.—(1) In addition to the due diligence observed under rule 3, a significant social media intermediary shall, within three months from the date of notification of the threshold under clause (v) of sub-rule (1) of rule 2, observe the following additional due diligence while discharging its duties, namely:—

(a) appoint a Chief Compliance Officer who shall be responsible for ensuring compliance with the Act and rules made thereunder and shall be liable in any proceedings relating to any relevant third-party information, data or communication link made available

or hosted by that intermediary where he fails to ensure that such intermediary observes due diligence while discharging its duties under the Act and rules made thereunder:

Provided that no liability under the Act or rules made thereunder may be imposed on such significant social media intermediary without being given an opportunity of being heard.

Explanation.—For the purposes of this clause “Chief Compliance Officer” means a key managerial personnel or such other senior employee of a significant social media intermediary who is resident in India;

(b) appoint a nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules made thereunder.

Explanation.—For the purposes of this clause “nodal contact person” means the employee of a significant social media intermediary, other than the Chief Compliance Officer, who is resident in India;

(c) appoint a Resident Grievance Officer, who shall, subject to clause (b), be responsible for the functions referred to in sub-rule (2) of rule 3.

Explanation.—For the purposes of this clause, “Resident Grievance Officer” means the employee of a significant social media intermediary, who is resident in India;”

9. After going through the contentions made in the statement filed by Mr.Jaishankar V. Nair, learned Central Government Counsel, Mr.Manas P. Hameed, learned counsel for the petitioner, submitted that the petitioner would approach the Grievance Officer appointed, as extracted (supra).

10. Aforesaid submission made by Mr.Manas P.Hameed, learned counsel for the petitioner, is recorded.

Accordingly, writ petition is disposed of.

Sd/-

**S. MANIKUMAR
CHIEF JUSTICE**

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

spc/

APPENDIX OF WP(C) 26210/2019

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF NEWS REPORT PUBLISHED BY THE NEW INDIAN EXPRESS ON 01.04.2019 REGARDING ARREST OF 11 MEN WHO PROMOTED CHILD PORNOGRAPHY THROUGH INTERNET.
- EXHIBIT P2 TRUE COPY OF NEWS REPORT DATED 23.12.2017 PUBLISHED BY NEWS18, REGARDING ARREST OF ADMINISTRATOR OF A PAEDOPHILE GROUP IN TELEGRAM.
- EXHIBIT P3 TRUE TRANSCRIPT OF NEWS REPORT PUBLISHED INDIA TODAY DATED 08.03.2019 REGARDING THE SUICIDE OF A GIRL FROM PULWAMA OF JAMMU.
- EXHIBIT P4 TRUE COPY OF NEWS REPORT PUBLISHED BY HINDUSTAN TIMES, DATED 02.05.2019 REGARDING THE SUICIDE OF A MINOR GIRL FROM NABARANGPUR DISTRICT OF ODISHA.
- EXHIBIT P5 TRUE COPY OF NEWS REPORT OF ODISHA TIMES, DATED 19.07.2019 REGARDING THE SUICIDE OF A MINOR GIRL FROM KENDRAPARA DISTRICT OF ODISHA.
- EXHIBIT P6 TRUE COPY OF STATISTICS BY A WEBSITE TELEGRAM ANALYTICS SHOWING THE VIEWS OF A CHANNEL NAMED DESI AUNTY WHICH FOCUSES ON THE VIDEOS OF SOUTH INDIAN WOMEN.
- EXHIBIT P7 TRUE COPY OF STATISTICS BY A WEBSITE TELEGRAM ANALYTICS SHOWING THE VIEWS OF A CHANNEL NAMED SPYCAMX WHICH FOCUSES ON THE VIDEOS CAPTURED BY INSTALLING HIDDEN CAMERAS.
- EXHIBIT P8 TRUE COPY OF THE SCREENSHOT OF WEBSITE TELEGRAM ANALYTICS SHOWING THE VIEWS OF A CHANNEL NAMED MALLUVEDIS WHICH FOCUSES ON THE VIDEOS OF KERALA WOMEN.
- EXHIBIT P9 TRUE COPY OF SCREEN SNAP OF TELEGRAM CHANNEL NAMED TEENVDO PROMOTING SEXUAL CONTENTS INVOLVING CHILDREN.
- EXHIBIT P10 TRUE TRANSCRIPT OF REPORT PUBLISHED THE QUINT DATED 20.02.2019 REGARDING HOW

TERRORIST COMMUNICATE USING DARK WEB AND ENCRYPTION TECHNOLOGY.

EXHIBIT P11 TRUE TRANSCRIPT OF NEWS REPORT DATED 13.08.2019 PUBLISHED BY INDIA TODAY ON ISIS USES TELEGRAM TO SPREAD HATE MESSAGES AGAINST INDIA.

EXHIBIT P12 TRUE TRANSCRIPT OF REPORT DATED 16.04.2018 PUBLISHED BY REUTERS REGARDING THE BLOCKING OF TELEGRAM BY RUSSIAN COURT.

EXHIBIT P13 TRUE TRANSCRIPT OF REPORT DATED 16.04.2018 PUBLISHED BY REUTERS REGARDING THE BAN OF TELEGRAM IN INDONESIA.

Exhibit P14 TRUE COPY OF REPRESENTATION DATED 18.8.2020 FILED BY THE PETITIONER BEFORE THE SECRETARY, MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY

Exhibit P14a TRUE COPY OF SCREENSHOT SHOWING EMAIL SENT BY THE PETITIONER TO THE EMAIL ADDRESS OF THE SECRETARY, MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY ON 19.8.2020

RESPONDENT EXHIBITS

EXHIBIT R1 (A) RELEVANT PORTION OF INFORMATION TECHNOLOGY (PROCEDURE AND SAFERUARDS FOR BLOCKING FOR ACCESS OF INFORMATION FOR PUBLIC) RULES 2009.

EXHIBIT R1 (B) LIST OF NODAL OFFICERS.

EXHIBIT R1 (C) INTERMEDIARY GUIDELINES 2011.