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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Sixteenth day of September Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE SANJIB BANERJEE, THE CHIEF JUSTICE

AND

THE HON`BLE MR JUSTICE P.D.AUDIKESAVALU

WP.NOS.13055 AND 12515 OF 2021

DIGITAL NEWS PUBLISHERS ASSOCIATION, [PETITIONERS IN WP.13055/2021]
REP BY MR HARIHARAN SIVAKUMAR AND
HAVING ITS CHENNAI OFFICE AT 19,
KOCHAR TOWER VENKATNARAYANA ROAD,
T.NAGAR CHENNAI 600 017.

2 MUKUND PADMANABHAN
C3 ALSA REGENCY
NO.165, ELDAMS ROAD,
ALWARPET, CHENNAI 600 018.

T.M.KRISHNA [PETITIONER INW P.12515/2021]

Vs

1 UNION OF INDIA [RESPONDENTS INW P.13055/2021]
REP BY THE SECRETARY
MINISTRY OF ELECTRONICS
AND INFORMATION TECHNOLOGY ELECTRONICS NIKETAN
6, CGO COMPLEX,
LODHI ROAD NEW DELHI 110 003
EMAIL secretary@meity.gov.in

2 THE SECRETARY,
MINISTRY OF INFORMATION AND BROADCASTING
SHASTRI BHAVAN NEW DELHI 110 001
EMAIL secy.inb@nic.in

1 UNION OF INDIA, [RESPONDENTS IN WP.12515/2021]
REP. BY THE SECRETARY,
MINISTRY OF ELECTRONICS AND INFORMATION TECHENOLOGY,
ELECTRONICS NIKETAN, 6 CGO COMPLEX,
PRAGATI VIHAR, LODHI ROAD, NEW DELHI.

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2 UNION OF INDIA,
REP. BY THE SECRETARY,
MINISTRY OF INFORMATION AND BROADCASTING,
A- WING, SHASTRI BHAVAN,
NEW DELHI 110 001.

Writ Petitions under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a writ of Declartion, or any other writ, order or direction in the nature of a writ of declaration, declaring the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 as ultra vires the constitution, void and vioative of Articles 14 and Article 19(1)(a) and 19(1)(g) of the Constitution of India (in WP.No.13055/2021)and;

(ii) Writ Petitions under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a writ of Declartion, or any other writ, order direction or order in the nature of a writ of declaration and Declare the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 notified on 25/02/2021 as ultra vires both the Constitution of India and the Information Technology Act, 2000. (in WP.12515/2021) respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of MR.P.S.RAMAN Senior Counsel for MR.R.PARTHASARATHY, Advocate for the petitioner in WP.No.13055/2021 and MR.ARUN KARTHIK MOHAN Advocate for the Petitioner in WP.12515/2021 the court made the following order:-

(Order of the Court was made by the Hon'ble Chief Justice)

The matters pertain to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The challenge to the Rules is on the ground that they are ultra vires, inter alia, Articles 14 and 19 of the Constitution.

2. In particular, the petitioners refer to Rule 9 of the said Rules which pertains to observance and adherence to the Code. Rule 9 (3) provides for ensuring observance and adherence to the Code of Ethics by publishers operating in the territory of India as laid down in the Appendix to the Rules. The grievances made in relation to publishers would be governed by a three-tier structure as follows:

" (a) Level I - Self-regulation by the publishers;

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(b) Level II - Self-regulating bodies of the publishers;

(c) Level III- Oversight mechanism by the Central Government."

3. For understandable reasons, the petitioners are wary of the oversight mechanism of the Central Government indicated as the final tier of the process of regulation. Prima facie, there is substance in the petitioners' grievance that an oversight mechanism to control the media by the government may rob the media of its independence and the fourth pillar, so to say, of democracy may not at all be there.

4. Nothing more need be said on such aspect of the matter since the High Court of Judicature at Bombay, by an order dated August 14, 2021, has stayed the operation of sub-rules (1) and (3) of Rule 9 of the said Rules of 2021.

5. Indeed, there may have been no need to pass an independent order. However, it is submitted on behalf of the petitioners that notwithstanding the order passed by the High Court of Judicature at Bombay, which ought to have a pan-India effect, notices have been issued to the petitioners subsequently requiring the petitioners to adhere to, inter alia, the said Rules and Rule 9 thereof.

6. It must be recorded in all fairness that learned Additional Solicitor-General, representing the Union, accepts that the order passed by the High Court of Judicature at Bombay would have pan-India effect.

7. It is also recorded that the matter had been adjourned previously on the ground that transfer petitions had been filed before the Supreme Court. However, it does not appear that any order has been passed by the Supreme Court on the transfer petitions or there is any legal impediment to the present petitions being taken up by this court.

8. The other ground of immediate challenge, which is not covered by the order of the High Court of Judicature at Bombay, pertains to Rules 3 and 7 of the impugned Rules. The petitioners' particular grievance is to the incorporation of sub-clause (x) of Rule 3 (1) (b) that provides as follows:

> "(x) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person;"

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9. The petitioners point out that along with the obligation imposed on the intermediary under Rule 3 (1) (c) to terminate the access or usage rights of users for non-compliance with the provisions of Rule 3 (1) (b), the provisions for grievance redressal have been made stringent and, finally, Rule 7 has been incorporated making an intermediary liable for punishment upon the intermediary failing to observe the said Rules.

10. Though it is submitted by learned Additional Solicitor-General that Rule 3 of the present Rules are on similar lines as Rule 3 of the 2011 Rules, there appear to be key changes, particularly the introduction of sub-clause (x) in clause (b) of sub-rule (1) thereof and the additional obligation on the intermediary in, inter alia, clause (c). Any host of a website or platform would be an intermediary and an ordinary person may be denied access to the platform on the ipse dixit of the intermediary or on the intermediary's apprehension that such intermediary may be proceeded against.

11. Section 79 of the Information Technology Act, 2000 grants exemption from liability to intermediaries in certain cases. However, by virtue of Section 79 (2) (c), the exemption would not apply if the intermediary is found not to have observed "guidelines as the Central Government may prescribe in this behalf."

12. In the light of the Supreme Court judgment reported at (2015) 5 SCC 1 (*Shreya Singhal v. Union of India*), wherein Section 79(3)(b) of the Act has been read down and it has observed therein that unlawful acts beyond what is laid down in Article 19(2) of the Constitution "obviously cannot form any part of Section 79" of the Act, there is substantial basis to the petitioners' assertion that Article 19 (1) (a) of the Constitution may be infringed in how the Rules may be coercively applied to intermediaries.

13. Indeed, the Supreme Court observed, at paragraph 122 of the report, that "it would be very difficult for intermediaries like Google, Facebook, etc. to act when millions of requests are made and the intermediary is then to judge as to which of such requests are legitimate and which are not." Though the petitions have not been brought by hosts of website platforms, social media platforms on the website are used by one and sundry and there is a genuine apprehension, as the petitioners' suggest, that a wink or a nod from appropriate quarters may result in the platform being inaccessible to a citizen.

14. Accordingly, if there is any action taken in terms of Rule 3 of the said Rules read with Rule 7 thereof during the interregnum, it will abide by the result of the petitions and further orders herein.

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15. Since counter-affidavits have been filed, and it is submitted by learned Additional Solicitor-General that the main matter is likely to be taken up by the Supreme Court in early October, 2021, let these matters appear in the last week of October, 2021.

List on 27.10.2021.

-sd/-
16/09/2021
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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SECRETARY
UNION OF INDIA
MINISTRY OF ELECTRONICS AND INFORMATION
TECHNOLOGY ELECTRONICS
NIKETAN 6, CGO COMPLEX LODHI ROAD
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2 THE SECRETARY
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3 THE SECRETARY,
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MINISTRY OF INFORMATION AND BROADCASTING,
A- WING, SHASTRI BHAVAN,
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C.C.TO THE MR.R.PARTHASARATHY ADVOCATE SR.NO.5275/2021

Order

in
WP.NOS.13055 AND 12515 OF 2021

Date :16/09/2021

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