

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal Nos 4509-4511 of 2024
(Arising out of SLP (C) Nos 6717-6719 of 2024)**

Editors Guild of India

... Appellant

Versus

Union of India & Ors

... Respondents

WITH

**CIVIL APPEAL NOS 4512-4514 OF 2024
(Arising out of SLP (C) Nos 6871-6873 of 2024)**

AND

**CIVIL APPEAL NOS 4515-4517 OF 2024
(Arising out of SLP (C) Nos 7124-7126 of 2024)**

O R D E R

- 1 Leave granted.
- 2 Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2022 forms the subject matter of a constitutional challenge which is pending before the High Court of Judicature at Bombay.
- 3 The Rule which was notified on 6 April 2023 *inter alia* stipulates that the intermediary shall make reasonable efforts by itself and cause the users of its computer resource to not host, display, upload, modify, publish, transmit, store, update or share any information that... “in respect of any business of the Central

Government is identified as fake or false or misleading by such Fact Check Unit¹ of the Central government as the Ministry may by notification publish in the Official Gazette specify". Rule 7 stipulates that "where an intermediary fails to observe these Rules, the provisions of sub-section (1) of Section 79 of the Act shall not be applicable to such intermediary and the intermediary shall be liable for punishment under any law for the time being in force including the provisions of the Act and the Indian Penal Code.

- 4 A batch of petitions under Article 226 of the Constitution challenging the constitutional validity of the Rule 3(1)(b)(v), as amended on 6 April 2023, was heard by a Division Bench of the High Court of Judicature at Bombay.
- 5 On 27 April, 2023, a statement was made before the Division Bench by the Additional Solicitor General appearing on behalf of the Union that the FCU contemplated by the Rule in question will not be notified until 5 July 2023. The Division Bench accepted the statement of the ASG, noting that "without a Fact Check Unit being notified, the Rule cannot operate" and even if the case were to be heard for ad interim relief, it would "require a full hearing covering all the grounds that are likely to be covered in a final disposal". The statement which was made on behalf of the Union of India was extended from time to time on 11 occasions.
- 6 "On 29 September 2023, the statement was extended by the Solicitor General. As the Division Bench recorded," the Solicitor General fairly states that the previous statement made will continue until the judgment is delivered.

¹ "FCU"

7 On 31 January 2024, there was a difference of opinion between the two judges, (Mr Justice GS Patel and Ms Justice Neela Gokhale) constituting the Division Bench. Each of them delivered separate judgments. Mr Justice GS Patel came to the conclusion that Rule 3(1)(b)(v), as amended, is unconstitutional in its entirety. On the other hand, Ms Justice Neela Gokhale came to the conclusion that the Rule is valid subject to certain safeguards which were incorporated in the judgment while interpreting the Rule. Broadly speaking, the safeguards in the judgment of the Justice Neela Gokhale encompasses four areas:

- (i) Firstly, on receiving the view of the FCU, the intermediary is required to do no more than place a disclaimer;
- (ii) Secondly, Rule 3(1)(b)(v) could operate only in a situation involving actual malice, with a knowledge of the falsehood and in reckless disregard of the truth;
- (iii) Thirdly, the operation of Rule 3(1)(b)(v) would be restricted to those grounds which are referable to Article 19(2) of the Constitution; and
- (iv) Fourthly, even if the intermediary were to block the content, the procedure under the 'Blocking Rules of 2009' would have to be followed.

8 Following the difference between the two judges constituting the Division Bench, a statement was initially made by the Solicitor General that the earlier statement which had held the field pending the delivery of the judgment would continue until the matter was taken up by the third Judge.

9 Eventually, on 11 March 2024, the Judge of the High Court, to whom the petitions

have been assigned on the difference which has arisen between the two judges, delivered an order rejecting the application for interim relief.

- 10 Following the rejection of interim relief on 11 March 2024, the Union Government has issued a notification dated 20 March 2024. The Notification which is published in the Gazette of India is in the following terms :

“In exercise of the powers conferred by sub-clause (v) of clause (b) of sub-rule (1) of rule 3 of the Information Technology Intermediary Guidelines and Digital Media Ethics Code Rules, 2021, the Central Government hereby notifies the Fact Check Unit under the Press Information Bureau of the Ministry of Information and Broadcasting as the fact check unit of the Central Government for the purposes of the said sub-clause, in respect of any business of the Central Government.”

- 11 On 15 March 2024, Justice AS Chandurkar, to whom the hearing of the difference has been assigned by the Chief Justice of the High Court, has directed that the petitions and the interim application shall be listed for consideration at 2.30 pm on 15 April 2024.
- 12 Mr Darius Khambata, senior counsel, Mr Shadan Farasat and Mr Gautam Bhatia counsel have appeared in support of the challenge to the order of the third Judge of the High Court declining to grant interim relief. Mr. Tushar Mehta Solicitor General of India appeared on behalf of the Union of India.
- 13 Mr Darius Khambata, senior counsel submitted thus:

- (i) The statement which was made before the High Court on behalf of the Union of India to the effect that the FCU would not be notified “until final judgment is delivered” would, in the normal course of events, have to be treated as continuing in force until the judgment is pronounced by the third Judge, to whom the adjudication in pursuance of the difference of views between the two judges of the Division Bench is assigned; a final judgment would emerge only after the decision of the third Judge bearing on the difference in views elicited in the two separate opinions of the judges constituting the Division Bench;
- (ii) Though one of the two judges constituting the Division Bench held the entirety of the Rule under challenge to be unconstitutional, even the second Judge on the Bench upheld the validity of the Rule subject to the four interpretative safeguards in regard to:
 - (i) the intermediary being required to place a disclaimer;
 - (ii) The Rule being confined to a case involving actual malice, knowledge of falsehood or reckless disregard of truth;
 - (iii) The application of the Rule will have to be structured on the grounds stipulated in Article 19(2) of the Constitution; and
 - (iv) The procedure under the Blocking Rules of 2009 must be complied with.

Neither of the above safeguards are provided in the rule. The judgment of

the second judge re-writes the rule;

- (iii) As a matter of fact, there was be no challenge to the Rule by any intermediary for the simple reason that faced with the prospect of losing the safe-harbour under Section 79(1) every intermediary, guided by commercial interest, would adopt a simple recourse of pulling down the content which is hosted on their website;
- (iv) By its notification dated 20 March 2024, the Union Government in the MeITY² has directed that the FCU under the Rules will be under the Press Information Bureau of the Ministry of Information and Broadcasting;
- (v) The above notification shows that the FCU of the Central Government will decide whether the information in regard to the business of the Central Government is fake, false and misleading;
- (vi) There is no reason or justification to introduce an FCU of the above nature only in relation to the business of the Central Government;
- (vii) Rule 3(1)(b)(v) has a serious chilling effect on the exercise of the freedom of speech and expression under Article 19(1)(a) of the Constitution since the communication of the view of the FCU will result in the intermediary simply pulling down the content for fear of consequences; and
- (viii) The fundamental right under Article 19(1)(a) is paramount especially when in the context of the impending general elections, there must be a free flow of information and ideas not just confined to political speech, satire

² Ministry of Electronics and Information Technology

and comedy.

- 14 On the above grounds, *prima facie*, it has been submitted that the stay which operated during the pendency of the proceedings before the High Court of Judicature at Bombay should be directed to continue to remain in operation till the difference between the two Judges constituting the Division Bench is finally resolved by the third Judge.
- 15 Supporting the submissions of Mr Darius Khambata, Mr Shadan Farasat, counsel submitted that:
- (i) There can be no truth in the absence of the exercise of rights under Article 19(1)(a) of the Constitution;
 - (ii) The expression of views by a private person in regard to the conduct of the business of the Government lies at the core of Article 19(1)(a) of the Constitution which is what is attacked by the Rule in question;
 - (iii) As a result of the notification which has been issued on 20 March 2024 by which the PIB has been notified as the FCU of the Central Government for the purposes of Rule 3(1)(b)(v), the version of the Government becomes the only version available; and
 - (iv) Particularly in the context of the election cycle which is to commence with the notification of the general elections, the operation of the Rule would amount to placing before the public a singularity of truth.
- 16 Mr Gautam Bhatia, counsel in support of the above submissions urged that:

- (i) While the third Judge in the impugned order dated 11 March 2024 has accepted the assurance of the Union of India that the Rule will not be applied to satire, comedy or political opinions, it is a well settled principle that a provision of law which is unconstitutional does not become constitutional merely on the assurance of fair application; and
- (ii) Section 79(1) of the Act which embodies the safe-harbour provision protects the core of the internet and any deprivation of the protection available to an intermediary should receive strict construction.

17 Mr Tushar Mehta, Solicitor General has, on the other hand, submitted that :

- (i) Since the third Judge is to commence final hearing on 15 April 2024; there is no reason for this Court to consider the application for interim relief at this stage;
- (ii) While Section 69A of the Information Technology Act confers a power to issue directions for blocking of public access of any information through a computer resource, the statutory provision is not entirely adequate to deal with the proliferation of false, misleading and fake news on the internet;
- (iii) In terms of Rule 3(1)(b)(v), as interpreted, the intermediary is not supposed to or necessarily required to take down the post but only issue a disclaimer along the lines suggested by the FCU of the Government;
- (iv) The deprivation of the safe harbour provision would not operate to cause prejudice because the ultimate arbiter of an action which may be brought

before a Court by a person who complains of misleading or false news is the Court itself; the intermediary possesses a right to defend itself in judicial proceedings by defending the hosting of the information on the ground that it is true;

- (v) The expression 'government business' as contained in Rule 3(1)(b)(v) has in the interpretation placed by the Union Government, to be read in a constitutional context in the backdrop of the Transaction of Business Rules of the Union Government;
 - (vi) The provisions of Rule 3(1)(b)(v) have to be read in the context of Article 19(2) of the Constitution, as was submitted before the High Court on behalf of the Union;
 - (vii) There is no challenge to the validity of the Rule on the part of any intermediary; and
 - (viii) While the FCU has been notified on 20 March 2024, the process for notification has commenced much prior thereto.
- 18 At the present stage, this Court is cognizant of the fact that a final hearing of the proceedings is to commence in the reasonably foreseeable future - on 15 April 2024 - before Justice AS Chandurkar to whom the task of resolving the difference between the two judges of the Division Bench has been assigned by the Chief Justice of the High Court.
- 19 As the facts have emerged before this Court, it is not in doubt that since 27 April 2023 until 11 March 2024, the position which obtained on the implementation of Rule 3(1)(b)(v) was based on an assurance of the Union Government that

pending the delivery of the final judgment, the FCU would not be notified. Absent a notification of the FCU, the Rule itself, as the High Court observed in its initial order, could not be enforced as such.

- 20 The issue before this Court is as to whether the status quo, as it obtained during the pendency of the proceedings before the Division Bench should be allowed to be altered at this stage.
- 21 While one of the two judges constituting the Division Bench has come to the conclusion that the Rule is invalid in its entirety, the other Judge, has upheld the Rule subject to interpretative safeguards. In that context, it has been submitted before this Court that the safeguards which were introduced by the Judge are not contained in the Rule per se. As a matter of fact, it is also common ground that these safeguards emerged on the basis of the submissions which were urged by the Solicitor General before the High Court.
- 22 In the course of the order dated 11 March 2024, declining interim relief, Justice AS Chandurkar *inter alia* adverted to the fact that the FCU had not been notified at that stage. Thus, though the Judge specifically observed in paragraph 19 that an arguable case involving the challenge to the validity of the Rule 3(1)(b)(v) arose for consideration, it was found not necessary to stay the implementation of the Rule. The position has now undergone a change by the notification of the Rule on 20 March 2024, since the pronouncement of the order declining interim relief.
- 23 We have adverted to the rival submissions which have been urged before this

Court on behalf the petitioners on the one hand and the Union of India on the other. We are of the considered view that the challenge which is pending before the High Court of Judicature at Bombay implicates core values impinging on the freedom of speech which is protected by Article 19(1)(a) of the Constitution. Based on the position, since all the issues await adjudication of the High Court, we are desisting from expressing an opinion on the merits which may ultimately have the impact of foreclosing a full and fair consideration by the third Judge of the High Court.

- 24 However, we are clearly of the view that the notification dated 20 March 2024 which has been issued by the Union Government after the rejection of the application for interim relief would need to be stayed. Quite apart from the statement of the Union of India which held the field during the pendency of the proceedings before the High Court, the challenges to the validity of Rule 3(1)(b)(v) involve serious constitutional questions. The impact of Rule 3(1)(b)(v) on the fundamental right to the freedom of speech and expression would fall for analysis by the High Court.
- 25 We accordingly set aside the opinion of the third Judge dated 11 March 2024 declining interim relief and direct that pending the disposal of the proceedings before the High Court, the notification of the Union Government in the Ministry of Electronics and Information Technology dated 20 March 2024 shall remain stayed.
- 26 This order shall also govern the consequential orders which have been passed by the Division Bench on 13 March 2024 giving effect to the opinion of the third Judge.

27 The Appeals are accordingly disposed of.

28 Pending applications, if any, stand disposed of.

.....CJI
[Dr Dhananjaya Y Chandrachud

.....J.
[J B Pardidwala]

.....J.
[Manoj Misra]

New Delhi;
March 21, 2024.
GKA

ITEM NO.13+22

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 6717-6719/2024

(Arising out of impugned final judgment and order dated 08-02-2024 in IA(L) No. 4178/2024 11-03-2024 in IA(L) No. 4178/2024 13-03-2024 in IA(L) No. 4178/2024 passed by the High Court Of Judicature At Bombay)

EDITORS GUILD OF INDIA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.69237/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

SLP(C) No. 6871-6873/2024 (IX)

(IA No.69232/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

LP(C) No. 7124-7126/2024 (IX)

IA No.71314/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 21-03-2024 These petitions were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Darius Khambata, Sr. Adv.
Mr. Navroz Seervai, Sr. Adv.
Ms. Pritha Srikumar Iyer, AOR
Ms. Arti Raghavan, Adv.
Mr. Atharv Gupta, Adv.

Mr. Shadan Farasat, AOR
Mr. Harshit Anand, Adv.
Mr. Aman Naqvi, Adv.

Ms. Hrishika Jain, Adv.
Ms. Natasha Maheshwari, Adv.
Ms. Mreganka Kukreja, Adv.
Mr. Abhishek Babbar, Adv.

Mr. Arvind P. Datar, Sr. Adv.
Mr. Gautam Bhatia, Adv.
Mr. Abhinav Sekhri, Adv.
Ms. Radhika Roy, Adv.
Ms. Gayatri Malhotra, Adv.
Ms. Anandita Rana, Adv.
Ms. Pragya Barsaiyan, Adv.
Mr. Madhav Aggarwal, Adv.
Ms. Vrinda Bhandari, AOR

For Respondent(s) Mr. Tushar Mehta, SGI
Mr. Rajat Nair, Adv.
Mr. Gaurang Bhushan, Adv.
Mr. G.S. Makker, AOR
Mr. Madhav Sinhal, Adv.
Ms. Rajeshwari Shankar, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 The Appeals are disposed of in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)