

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN**

Wednesday, the 14th day of February 2024 / 25th Magha, 1945
WP(C) NO. 36896 OF 2022(J)

PETITIONER:

ANEESH K. THANKACHAN, [REDACTED]
[REDACTED]

RESPONDENTS:

- 1. UNION OF INDIA REPRESENTED BY SECRETARY TO THE MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA, ELECTRONICS NIKETAN, 6 CENTRAL GOVERNMENT OFFICES COMPLEX, NEW DELHI - 110003.**

AND 7 OTHERS

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct respondents 2 & 3 to direct respondents 5 and 6 to immediately and temporarily block the video uploaded in You Tube at URL: <https://www.youtube.com/watch?v=DyVdZAacpyM>, at the earliest, pending final disposal of the writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 13-09-2023 and upon hearing the arguments of M/S. GEORGE VARGHESE(PERUMPALLIKUTTIYIL), MANU SRINATH, NIMESH THOMAS & SHERIN EDISON, Advocates for the petitioner, DEPUTY SOLICITOR GENERAL OF INDIA for the respondents 1 to 3, GOVERNMENT PLEADER for the respondents 4 & 5 and of M/S. RIJI RAJENDRAN, MITHA SUDHINDRAN, BHAIRAVI S.N, SOURADH C.VALSON, SANTHOSH MATHEW Advocates for the respondents 6 and 7, the court passed the following:

DEVAN RAMACHANDRAN, J.

WP(C) No.36896/2022

Dated this the 14th day of February, 2024

O R D E R

A very interesting and crucial aspect has been thrown up during the hearing of this case.

Without entering into the merits of any of the rival contentions at this stage, it is relevant that Rule 3 of Part II of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter referred to as ‘the Rules’ for short), provides for Due Diligence by an Intermediary; and for the Grievance Redressal Mechanism of Intermediary.

As per the first part of Rule 3, the intermediary is to formulate the Rules and Regulations, Privacy Policy and User Agreement; and is expected to make reasonable efforts to cause

the users of its computer resource to not host, display, upload, modify, publish, transmit, store, update or share any information as are enumerated in I to X. Thereafter, under Clause 3(1)(d), it mandates that an Intermediary, on obtaining information in the form of an order of a Court, or being notified by the Government or its agency under Section 79(3)(b) of the Act, shall not host, store or publish any unlawful information, *inter alia*, which is against the interest of sovereignty and integrity of India; its security; its friendly relations with foreign States; public order; Contempt of Court; defamation; incitement to an offence and such other.

Crucially, thereafter, as per Rule 3(2), under the head ‘Grievance Redressal Mechanism of Intermediary’, it is mandated that the intermediary will publish the name of the Grievance Officer, to which, a user or victim may make a complaint against violation of provisions of Rule 3, or any other matters pertaining to the computer resources made available by it.

However, the argument of Sri.Santhosh Mathew – learned counsel for the Google LLC, is that the Grievance Officer so appointed by his client will obtain no right to deal with any complaint which is not supported by a Court Order or notification by the appropriate Government under Section 79; except in the case of nudity and such other matters, as are enumerated in Rule 2(b) of the ‘Rules’.

If this argument is accepted, then one fails to understand why there should be a Grievance Officer at all, except where the complaint relates to nudity; and obviously, therefore, the phrase, ‘user or victim may make complaints against violation of the provisions of the Rules would appear to be virtually superfluous.

Obviously, this is a matter which the Union of India will have to explain before this Court, particularly *qua* the difference in the amplitude of duties, responsibilities and powers of the Intermediary viz a viz Rule 3(i)(d) and Rule 3(ii)(a) of the ‘Rules’.

To paraphrase, when, under the head ‘Due Diligence By The Intermediary’, Rule 3(i)(b) provides that they shall act on a Court order or notification by the Government; and then provides under Rule 3(i)(a), that the Grievance Officer is obligated to consider complaints of violation of the provisions of the ‘Rule’, if the argument of Sri.Santhosh Mathew is accepted, then the latter portion becomes redundant, except to the case of nudity and such other specific instances provided under Rule 3(ii)(b).

This Court is not sure if this is the manner in which the provisions have been designed; and am, therefore, of the view that the Government of India should answer this specifically.

For the afore purpose, list this matter on 01.03.2024.

Sd/-

DEVAN RAMACHANDRAN,
JUDGE

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