

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 804/2017

(Arising out of impugned final judgment and order dated 23-09-2016 in WPC No. 7663/2016 passed by the High Court of Delhi at New Delhi)

KARMANYA SINGH SAREEN & ANR.

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

(IA No. 6140/2021 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 11372/2021 - CLARIFICATION/DIRECTION)

WITH

W.P.(C) No. 347/2017 (PIL-W)

W.P.(C) No. 463/2021 (PIL-W)

(IA No. 53927/2021 - GRANT OF INTERIM RELIEF and IA No. 53930/2021 - PERMISSION TO FILE LENGTHY LIST OF DATES)

T.P.(C) No. 2145/2022 (XVI-A)

(FOR ADMISSION and IA No.143173/2022-PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 01-02-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH  
HON'BLE MR. JUSTICE AJAY RASTOGI  
HON'BLE MR. JUSTICE ANIRUDDHA BOSE  
HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.  
Mr. Prabhas Bajaj, Adv.  
Ms. Kritika Bhardwaj, Adv.  
Ms. Ria Singh Sawhney, Adv.  
Mr. A. Deshmukh, Adv.  
Mr. Udayaditya Banerjee, Adv.  
Mr. Gaurav Sharma, AOR  
Mr. Dhawal Mohan, Adv.  
Mr. Prateek Bhatia, Adv.  
Mr. Paranjay Tripathi, Adv.  
  
Mr. Chaitanya Rohilla, Adv.  
Petitioner-in-person

Mr. Aashim Sood, Adv.  
Ms. Senu Nizar, Adv.  
Mr. Ekansh Gupta, Adv.  
Mr. Velpula Auditya, Adv.  
Mr. Rhythm Buaria, Adv.  
Mr. Kuber Bajaj, Adv.  
Ms. Reaa Mehta, Adv.  
Mr. Kuber Bajaj, Adv.  
Mr. Utkarsh Sharma, AOR

Mr. Pallav Mongia, Adv.  
Mr. Tushar Srivastava, Adv.  
Mr. Ankush Mangal, Adv.

For Respondent(s) Mr. K. V. Viswanathan, Sr. Adv.  
Mr. T. V. S. Raghavendra Sreyas, AOR  
Mr. Apar Gupta, Adv.  
Ms. Vrinda Bhandari, Adv.  
Mr. Abhinav Sekhri, Adv.  
Mr. Gautam Bhatia, Adv.  
Mr. Tanmay Singh, Adv.  
Ms. Ramya Dronamraju, Adv.  
Ms. Gayatri Malhotra, Adv.  
Ms. Gayatri Gulati, Adv.  
Mr. Siddharth Vasudev, Adv.  
Mr. N Sai Vinod, Adv.  
Ms. Natasha Maheshwari, Adv.  
Mr. Madhav Aggarwal, Adv.  
Mr. M. G. Aravind Raj, Adv.  
Mr. Siva Gnanam, Adv.  
Mr. Om Prakash, Adv.

Mr. R. Venkataramani, Attorney General for India  
Mr. Tushar Mehta, Solicitor General  
Mr. K.M. Nataraj, A.S.G.  
Ms. Madhvi Diwan, ASG  
Mr. Vinayak Mehrotra, Adv.  
Mr. Chitvan Singhal, Adv.  
Ms. Sonali Jain, Adv.  
Ms. Mansi Sood, Adv.  
Mr. Abhishek Kumar Pandey, Adv.  
Mr. Gurmeet Singh Makker, AOR  
Mr. Rajat Nair, Adv.  
Mr. Kanu Agarwal, Adv.  
Ms. Swarupama Chaturvedi, Adv.  
Ms. Sansriti Pathak, Adv.  
Mr. Bajaji Srinivasan, Adv.  
Mr. Udai Khanna, Adv.  
Mr. Anirudh Bhat, Adv.  
Ms. Sansriti Pathak, Adv.

Mr. Sanjay Kapur, AOR

Mr. S. S. Shroff, AOR  
Mr. Kapil Sibal, Sr. Adv.  
Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Arvind Datar, Sr. Adv.  
Mr. Vivek Reddy, Sr. Adv.  
Mr. Tejas Karia, Adv.  
Ms. Mitali Daryani, Adv.  
Mr. Shashank Mishra, Adv.  
Mr. Akshi Rastogi, Adv.  
Ms. Vani Kaushik, Adv.  
Mr. M. Thangathurai, Adv.  
Ms. Amee Rana, Adv.  
Mr. Shantanu Mathur, Adv.  
Ms. Akshi Rastogi, Adv.  
Mr. Thejesh R, Adv.  
Ms. Preeti Kolluri, Adv.  
Mr. Parv Kaushik, Adv.  
Mr. Sharath Chandupatla, Adv.  
Ms. Aparajita J, Adv.  
Ms. Vibhuti Vasisth, Adv.  
Ms. Sana Banyal, Adv.  
Mr. Sidharth Luthra, Sr. Adv.  
Mr. Sheezan Hashmi, Adv.  
Ms. Shubhangani Jain, Adv.

Mr. Balaji Srinivasan, AOR

Mr. Arpan Behl, Adv.  
Mr. Abhay Chattopadhyay, Adv.  
Mr. Abhishek Shrivastava, Adv.  
Mr. M. P. Devanath, AOR

Mr. Sajjan Poovayya, Sr. Adv.  
Mr. Neel Mason, Adv.  
Mr. Senthil Jagadeesan, AOR

Mr. V. Giri, Sr. Adv.  
Mr. Abhinav Sharma, Adv.  
Mr. Ashutosh Ranjan, Adv.  
Mr. Alok Tripathi, AOR

Mr. Nikhil Nayar, Sr. Adv.  
Mr. Susmit Pushkar, Adv.  
Mr. Anchit Oswal, Adv.  
Ms. Naina Agrawal, Adv.  
For M/S. Khaitan & Co., AOR

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

When these matters were taken up, the respondents, in particular, the learned Attorney General and the learned Solicitor General appearing for the Union of India again brought to our notice the fact that a Bill called the Digital Personal Data Protection Bill, 2022 (for short 'the Bill') is on the anvil. It is their contention that the Bill would deal with all the aspects which are the subject-matter of the petitions before this Court and their approach is that the matters may not be taken up for hearing. This request is also echoed by Mr. Kapil Sibal, Mr. Arvind Datar, Mr. Mukul Rohatgi, Mr. Siddharth Luthra, Mr. Raju Ramachandran and Mr. Sajan Poovayya, learned senior counsel appearing for the respondents.

This is, however, stoutly contested by Mr. Shyam Divan and Mr. K. V. Viswanathan, learned senior counsel for the petitioners and Mr. Ashim Sood, learned counsel for the petitioners. They would point out that what is being stated as a reason for seeking adjournment of the matters, which is the stand before the Constitution Bench, is the prospect of a Bill going through various stages and finally merging as law and the said request should not detain this Court. Mr. Shyam Divan, learned senior counsel appearing on behalf of the petitioners would point out that the arguments would be addressed in a time-bound manner and the petitioners would, on their side, conclude their arguments latest by 9<sup>th</sup> February, 2023. He would complain that when these matters were originally taken up in the year 2017, the very same ground was

set forth for getting the matters adjourned and now we are in the year 2023.

Mr. Shyam Divan, learned senior counsel also did take us through the merits and drew our attention to the fact that the stand taken by WhatsApp, in particular, in regard to its consumers in Europe, is contrary to the stand taken in India, which is without any warrant and he prays that these matters may be heard.

Noticing the fact that the Bill may be considered and also it is unlikely that the arguments would conclude, we are of the view that the matters need not be considered immediately.

At this juncture, Mr. Shyam Divan, learned senior counsel would then pray for an interim order being passed in I.A. No. 6140 of 2021 in SLP (C) No. 804 of 2017. He took us through the I.A. and prayed that the reliefs which are sought for as directions may be granted. They read as follows:

“(i) stay the operation of the new Privacy Policy and Terms of Service dated 04.01.2021 of WhatsApp, and direct that the date of coming into force of the new Privacy Policy and Terms of Service (i.e. 08.02.2021) shall be deemed to have been extended, pending adjudication of the present Special Leave Petition;

(ii) Direct that, without prejudice to the rights and contentions of the Petitioners, WhatsApp shall not apply lower privacy standards for Indian Users, and WhatsApp shall apply the same Privacy Policy and Terms of Use for Indian Users as is being applied for Users in the European Region;

(iii) Direct WhatsApp to give the following undertaking to this Hon’ble Court, with respect to its Indian users:-

‘Till such time that a data protection legislation comes into force in India,

(i) WhatsApp shall not transfer or share any User data or information of Indian WhatsApp Users with Facebook, any other Facebook

company or any third party for any purpose;

(ii) WhatsApp shall not bring into force its new Privacy Policy dated 04.01.2021 for Indian Users.

'Upon such data protection legislation coming into effect, WhatsApp shall be at liberty to approach this Court for modification and/or variation of this undertaking'.

(iv) Direct the Ministry of Electronics and Information Technology, Government of India to issue necessary orders to WhatsApp to not to implement its new Privacy Policy and new Terms of Use for Indian Users from 08.02.2021, and to take necessary steps to ensure compliance with such orders, till further orders are passed by this Hon'ble Court."

Mr. Kapil Sibal, learned senior counsel appearing for the respondent-WhatsApp would point out letter dated 22<sup>nd</sup> May, 2021 addressed to the Ministry of Electronics and Information Technology (Meity), Government of India. Therein our attention is drawn to the following portion:

*"We take seriously the feedback we have received from your agency and want to confirm that WhatsApp will not limit the functionality of how WhatsApp works in the coming weeks as previously planned. We will continue to display our update, from time to time, to people who have not yet accepted. In addition, we will display the update whenever a user chooses relevant optional features like when a user communicates with a business receiving support from Facebook. We hope this approach reinforces the choice that people have in how they use WhatsApp, which was our intent from the beginning with this update. We will maintain this approach at least until the forthcoming Personal Data Protection (PDP) bill comes into effect."*

Learned senior counsel for the petitioners, no doubt, would pray for an interim order to the effect that even those persons who may have agreed to the terms of privacy policy declared by WhatsApp either in terms of the Privacy Policy of the year 2016 or even of

the Privacy Policy of 2021 should have the right to opt out, which means, according to them that while they should be permitted to use WhatsApp, their agreement to allow the use of data should not stand in the way of their wriggling out of their obligation, under which WhatsApp would have the right to share the data.

We would think that we may not be justified at this stage in granting the relief as sought by the petitioners in I.A. No. 6140 of 2021. The matters may require consideration of the issues which arise in these petitions.

As things stand, however, apart from noticing and recording the stand of WhatsApp that they have given an undertaking which is contained in the paragraph of the letter which we have extracted above, we would issue appropriate directions in causing wide publicity to the said stand of WhatsApp for the benefit of those consumers who may not have agreed to the terms of the Privacy Policy of the year 2021.

Accordingly, the application (I.A. No. 6140 of 2021) is disposed of as follows:

We record the stand taken in the letter dated 22<sup>nd</sup> May, 2021 and we also record the submissions of learned senior counsel for WhatsApp that they will abide by the terms of the letter which we have extracted above till the next date of hearing.

We further direct that WhatsApp will cause wide publicity to this aspect for the benefit of the consumers of WhatsApp by giving advertisement on a full page in five national newspapers on two occasions. The advertisement will necessarily incorporate the stand which has been taken in the letter dated 22<sup>nd</sup> May, 2021.

Needless to say, this will be without prejudice to the contentions of either of the parties.

List these matters for directions on 11<sup>th</sup> April, 2023 at 10.30 am.

(JAGDISH KUMAR)  
COURT MASTER (SH)

(VIDYA NEGI)  
(ASSISTANT REGISTRAR)