* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 16th February, 2022.**

\+ CS(OS) 656/2021

FIITJEE LIMITED .....Plaintiff

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Ankit Jain, Mr. Mohit Gupta, Mr. Vishal Saxena, Mr. Abhay P. Singh, Ms. Meenakshi Garg, Mukesh Goyal, Mr. Dilip Arya and Mr. Aayush Kumar, Advs.

Versus

VIDYA MANDIR CLASSES LTD. & ORS. .....Defendants

Through: Mr. Jayant K. Mehta, Sr. Adv. with Mr. Kartik Yadav, Mr. Parinay T. Vasandani, Mr. Karanvir Singh Goraya, Ms. Sumedha and Mr. Amrit Singh, Advs. for D-l.
Mr. Rajiv Nayar, Sr. Adv. with Mr. Harish Pandey, Adv. for D-2.
Mr. Aditya Gupta, Ms. Aishwarya Kane and Mr. Pratik Dixit, Advs. for D-9.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% **16.02.2022**

[VIA VIDEO CONFERENCING]

LA. 16137/2021 (of plaintiff u/O XXXIX R-1&2 CPC for interim relief)

1. This order will dispose of I.A No.16173/2021 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ('CPC' in short) filed by the plaintiff for interim relief.

2. I have heard the submissions of Mr. Sudhir Nandrajog, learned senior counsel for the plaintiff, Mr. Jayant K. Mehta, learned senior counsel for the defendant No.1, Mr. Rajiv Nayar, learned senior counsel for the defendant No.2 and Mr. Aditya Gupta, learned counsel for the defendant No.9 and considered the material on record and the cited case laws.

3. The plaintiff describes itself as a company registered under the Companies Act, 2013, constituted in the year 1992 for the purpose of imparting quality education to students so that they gain adequate skills to secure admission to various premier educational institutions in the country such as the Indian Institute of Technology. It claims to have developed a unique method of teaching and formulating various programs, which ensures a high rate of success amongst its pupils in gaining admission to these premier institutions of higher education. Over a period of time, on account of hard work put in by the teachers at its 80 centers spread across the country, it has been declared to be India's number one coaching institute for Engineering Entrance Examinations in 2019.

4. The grievance that has led to the filing of the present suit is a video that has been uploaded on YouTube by the defendant No.2, which according to the plaintiff contained falsities. The defendant no.2 is seen in the video (the transcripts have been placed at pages 26-64 of the plaintiff's documents) introducing the topic as akin to the battle between 'Sri Ram' and 'Ravan', certainly suggesting that the plaintiff was in the position of 'Ravan', by not heeding to the warnings of defendant No.1 on previous occasions, to refrain from disparaging it and thus inviting upon itself the strong rebuttal by defendant No.2. The plaintiff has been painted in a completely negative light by the use of such metaphors. Words such as '*gumrah*' have been used

against the plaintiff, the public is told that the plaintiff misled the parents, held the parents and children hostages, was focused only on making money, indulged in kidnapping and extortion, while at the same time ill-treating its teachers by not paying salaries and so on. There is also a comment on the refund policy of the plaintiff and other malpractices have been alleged. It is also claimed that there is a Central Bureau of Investigation ('CBI' in short) case against the plaintiff.

5. Mr. Sudhir Nandrajog, learned senior counsel for the plaintiff submitted that the intent of the video was retribution borne out of malice. It was explained that it was fair practice in the industry for institutions to issue advertisements where a comparative performance is published. Since the comparison in the advertisement issued by the plaintiff (page no.27 of the plaintiff's document) was not complimentary to the defendants, therefore, the offending video was uploaded by the defendant no.2. Assuming that the plaintiff's advertisement had caused discomfort to the defendants, they could have sought remedy against the plaintiff but it did not give them license to defame and abuse the plaintiff.

6. It was submitted that no CBI case was pending nor has the plaintiff been summoned by the CBI for investigation ever. Even as per the documents filed by the defendants (i.e. Document no.1), a complaint seems to have been filed and the Human Resource Development Minister had only assured that the matter would follow its own course. That would not mean that a CBI case has been registered or investigation was going on. Further, by relying on videos that showed a disgruntled teacher, whose services stood terminated and against whom the High Court had issued an injunction and in respect of which the teacher was in contempt, the claim has been made that

the plaintiff did not pay the teachers. Similarly, the National Consumer Disputes Redressal Forum has repeatedly upheld the refund policy of the plaintiff. The use of contemptuous words in the video, such as "kidnapping" was highly offensive, particularly when the plaintiff and defendants were in the same field of business and were competitors.

7. It was further submitted that the *mala fide* action of the defendants was also writ large in their manipulation of service in a civil suit filed by them pending before the District Court, Gautam Budh Nagar. The defendant no.1 had filed a suit on 29th November, 2021, after a legal notice had been issued by the plaintiff to the defendants on 17th November, 2021 and advance copy of this suit filed on 23rd November, 2021 had also been served on them. Thereafter, the summons in that suit were issued at the wrong address of the plaintiff i.e., it was sent to a study center and not to the registered or Corporate Office of the plaintiff, at a time when the study center was closed due to Covid-19 restrictions and which fact was known to all. Learned senior counsel submitted that the offending video had to be taken down, even at the interim stage, as its continued circulation would cause much loss of reputation to the plaintiff.

8. Mr. Jayant K. Mehta, learned senior counsel appearing on behalf of the defendant no.1 submitted that it was raising a defence of justification. It was submitted that the video relied upon material which was disclosed in the description box and therefore the statements made in the video were not baseless. It was further submitted that the defendant no.1 having relied on material would require to be given an opportunity to substantiate the statements made in the video. Opinions could differ and what inference is to be drawn may be looked into at a later stage. Finally, it was also submitted

that no final relief can be granted at an interim stage. The learned senior counsel submitted that the plaintiff could be compensated with award of damages, if the comments in the video were found to be unjustified but if the video was taken down, the defendant would get no opportunity to prove justification. It was also submitted that the video transcripts filed by the plaintiff were not reflecting the complete video. In these circumstances, when hyperlinks revealed the source of information and justification has been pleaded and further the plaintiff has sought damages, there was no occasion for grant of any interim relief. Reliance has been placed on the judgments in ***Khushwant Singh and Anr. Vs. Maneka Gandhi*** 2001 SCC OnLine Del 1030 and ***Dr. Shashi Tharoor Vs. Arnab Goswami and Anr.*** 2017 SCC OnLine Del 12049.

9. Mr. Rajiv Nayar, learned senior counsel appearing on behalf of the defendant no.2 submitted that apart from the fact that the interim reliefs sought are materially the same as the final reliefs sought in the plaint, except for damages, and which cannot be granted, the fact remains that in respect of prayer (a), no injunction in anticipation, can be granted. Existence of malice is also to be examined on evidence. Similarly, the defendant no.2, who also claims justification in making the statements recorded in the video, has to be granted an opportunity as well, to prove justification during trial. When such a plea of justification has been raised, there can be no interim injunction granted. Moreover, it was submitted that since the plaintiff had claimed damages, it was disentitled for interim injunction. It was further submitted that every word in the video cannot be looked into at this interim stage, to determine, whether they constituted defamation or not. Reliance has been placed on the judgements in ***State of U.P. Vs. Ram Sukhi Devi*** (2005) 9

SCC 733, ***Sardar Charanjit Singh Vs. Arun Purie & Ors.*** 1982 SCC OnLine Del 301, ***Indian Express Newspapers Vs. Dr. Jagmohan Mundhara & Anr.*** 1984 SCC OnLine Bom 256, ***Abdul Wahab Galadari Vs. Indian Express Newspapers (Bombay) Ltd.*** 1993 SCC OnLine Bom 180, ***Khushwant Singh*** (supra), ***P. Subba Rao v. Andhra Association, Delhi (Regd.),*** 2008 SCC OnLine Del 417, ***Tata Sons Limited Vs. Greenpeace International & Anr.*** 2011 SCC OnLine Del 466, ***Sellers Retail (India) (P) Ltd. Vs. Aditya Birla Nuvo Ltd.*** (2012) 6 SCC 792, ***Naveen Jindal Vs. Zee Media Corporation Ltd.*** (2014) 5 HCC (Del) 172, ***Dr. Shashi Tharoor*** (supra), and ***Kailash Gahlot Vs. Vijender Gupta & Ors.*** [order dated 27th August, 2021 in CS (OS) No.403/2021].

10. In rejoinder, the learned senior counsel for the plaintiff submitted that the entire tone and tenor of the video has to be considered and the plaintiff has not come to the court against one or two words. By removal of one or two words, the malice in the video will not get removed. It was submitted that videos are different from newspaper publications, inasmuch as the videos are available for viewership on a continuous basis and their removal was in the present time and not in the future. It was also submitted that justification is not the same as 'truth' and while truth can be an absolute defence, justification is not of that quality. Justification had to be founded on verifiable data but it was clear that the defendants have not verified the truth. Moreover, the *malafide* intent of the defendants was clear from the fact that the defendant no.2 admittedly had been in the employment of the plaintiff till 2011 and therefore was fully aware of the hard work of the plaintiff and its programs and the efforts put in by the teachers and yet he chose to make the wild allegations. This was not a case of pre-publication, as in the cases

relied by the defendants, where the Court did not have the proposed matter sought to be published and look into its impact. Here the publication has already been effected and it contained highly defamatory material and which was clearly not in public interest. Reliance has been placed on ***Bata India Ltd. v. A.M. Turaz***, 2012 SCC OnLine Del 5387 to submit that no one has a right to disparage the reputation of another. It was submitted that in appropriate cases, considering the impact on the plaintiff as well as public interest, relief of a final nature can be granted and the present case was one such case. In these circumstances, it was prayed that interim injunction be granted.

DISCUSSION

11. The plaintiff and the defendants are in the field of education. They both have developed programs that tutor students for competitive examinations such as 'JEE'. They claim to be well-known, having built their reputation over decades. As traditionally, transfer of knowledge has been considered as the highest of all human action and does not involve accumulation of wealth, one is hesitant to use the word "business" rivals to describe the plaintiff and the defendants but since both are incorporated entities, there appears to be no other apt word to describe them. Considering that the pool for both of them is the same i.e. the young students in the Higher Secondary Schools, who are desirous of joining premier engineering colleges and institutions, they seek to exert themselves to attract more and more from the common pool. In normal course, such competition would work for the improvement in the quality of the services and must be welcomed.

12. However, there are occasions when competition takes an ugly turn. To take a cue from the preamble to the Competition Act, 2002, practices having adverse effect on competition need to be prevented but at the same time competition must be promoted and sustained to protect the interest of consumers and to ensure freedom of trade carried by all participants in the markets, here the field of education.

13. While competing with one another, it is but natural that each player would portray themselves to be the best in the field. It is equally possible that while doing so, they may adversely comment on their competitors. Allegations and counter-allegations of disparagement, defamation, injury to reputation and similar issues then crop up. This is one such case.

14. The plaintiff in the instant application has made the following prayers:

> *"(a) an ex-parte injunction against all the defendants, its members, agents, assigns etc. requiring them to immediately take down the false, frivolous, defamatory and scandalous youtube videos as detailed in para 20 of the Plaint and be injuncted from posting, publishing, creating, uploading or circulating any defamatory or scandalous videos/articles/posts against the plaintiff and issue a written public apology, apologizing for creating uploading and circulating the aforementioned defamatory videos against the plaintiff; and/or*
>
> *(b) Pass any other further orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case, in favour of the plaintiff."*

15. The contentions against the grant of these prayers may be summarized under three heads: (i) that the mandatory injunction sought of taking down the video cannot be granted at the interim stage, when the defendants have

pleaded justification; (ii) that the final relief cannot be granted at the interim stage; and, (iii) that the plaintiff cannot seek injunction for future posting or publishing of articles and posts by the defendants. These will be discussed hereinafter.

16. It is true, as submitted by the learned senior counsel for the plaintiff, that the defence of justification is not of the same caliber as the defence of truth. Truth is an absolute defence and no injunction can follow when truth is pleaded. But it is undeniable that justification can be established only at trial and a defendant ought to have an opportunity to establish it through evidence. When the plea of justification is taken, the courts are slow in issuing injunctions against publication. The general view taken is that if the defendants fail to substantiate their defence of justification, then the plaintiff would become entitled to damages. In ***Fraser v. Evans****,* [1969] 1 QB 349 Lord Denning MR stated the law as follows*:*

> *"The court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since Bonnard v. Perryman. The reason sometimes given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a judge. But a better reason is the importance in the public interest that the truth should out. ... There is no wrong done if it is true, or if [the alleged libel] is fair comment on a matter of public interest. The court will not prejudice the issue by granting an injunction in advance of publication…"*

17. There is no thumb rule that lays down that the court is completely powerless to grant mandatory injunction or a final relief at the interim stage.

In ***Deoraj Vs. State of Maharashtra & Ors.*** (2004) 4 SCC 697, the Supreme Court has held:

> *"12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case___of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent."*

18. The facts in the present case would have to be considered to determine whether the plaintiff has made out a very strong *prima facie* case entitling it to an injunction that would tantamount to the grant of the final relief itself.

19. There is no gainsaying that in general, the *Bonnard Rule* has been followed by the courts in determining whether interlocutory injunctions

should be granted against publication in cases of defamation including in the case cited on behalf of the defendants viz. ***Tata Sons Limited Vs. Greenpeace International*** (supra). In *Bonnard* it was decided that an interim injunction should not be awarded unless a defence of justification by the defendant was certain to fail at trial level. Free speech has been held to be of paramount importance. The right to free speech must remain unimpeded, except when it leads to the commission of a wrongful act. Or the words published or spoken are *ex facie* untrue. As observed in ***Holley v. Smyth***, [1998] QB 726, the rule is also partly founded on the pragmatic grounds that until there has been disclosure of documents and cross-examination at the trial, a court cannot safely proceed on the basis that what the defendants wish to say is not true.

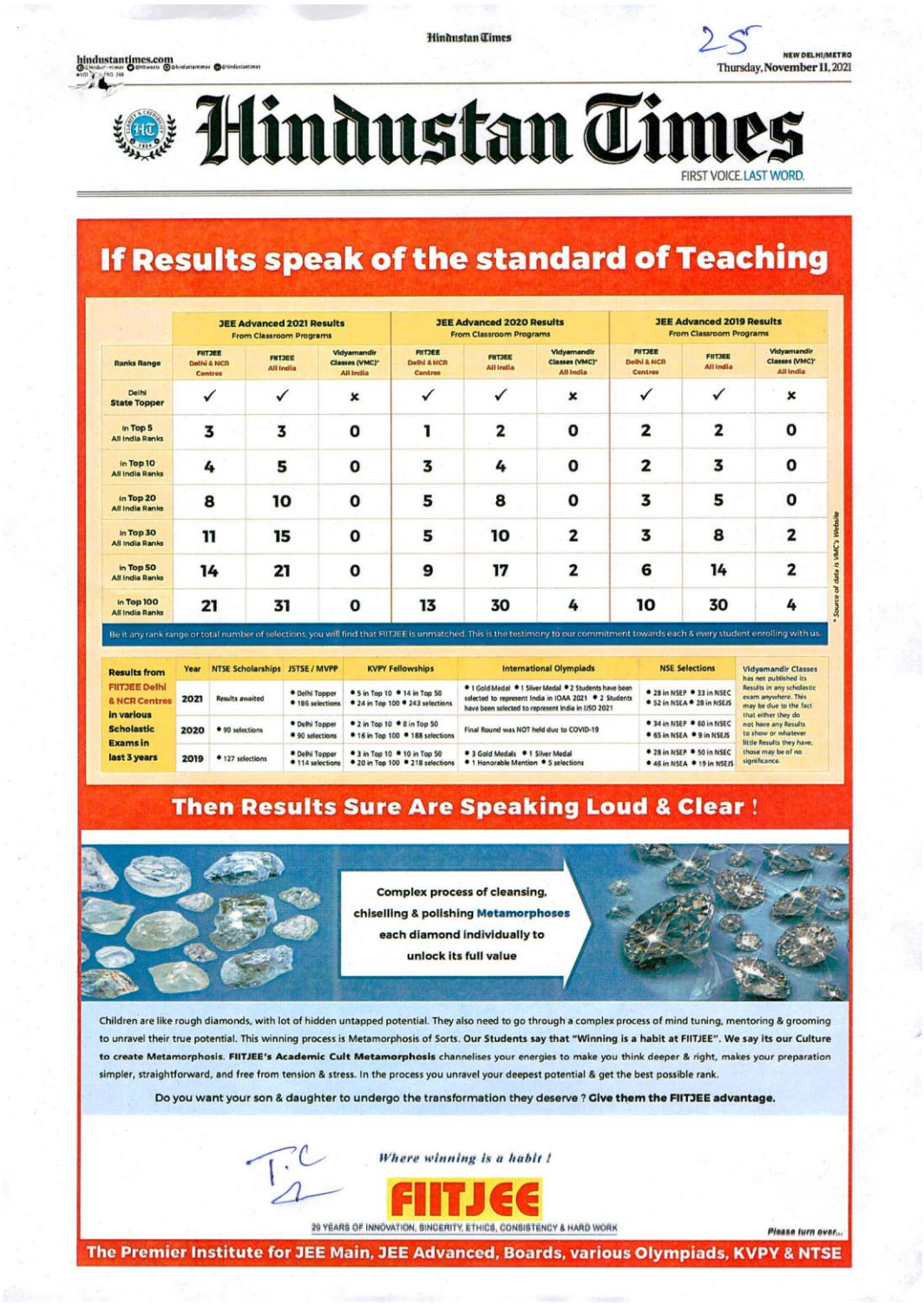
20. With respect to the argument that the plaintiff cannot seek injunction for future posting or publishing of articles, this court has held itself bound by the view of the Division Bench in ***Khushwant Singh's*** case (supra), succinctly restated in ***His Holiness Shamar Rimpoche Vs. Lea Terhune and Others*** AIR 2005 Del 167 as follows :-

> *"This court is fully bound by the judgment of the Division Bench in **Khushwant Singh's** case (supra). The sum and substance of the said judgment is that in a case of an article/publication of an allegedly offending and defamatory nature, pre-publication injunction of restraint should not be granted in case the defendant who supports the publication cites truth as a defence and pleads justification. In such a case as per **Khushwant Singh's** case, damages are the appropriate remedy."*

21. Having considered the view of the courts on all the three aspects

urged on behalf of the defendants, it is necessary to turn to the facts and circumstances at hand. In the present case, the defendants have submitted that they were justified in making the statements in the video as these were based on materials in respect of which links had been provided in the description of the video. The defendants have also filed newspaper and other reports and a judgment of the Consumer Disputes Redressal Forum-II, U.T. Chandigarh, in respect of the refund policy of the plaintiff. It is submitted that once the defendants have disclosed not only their defence to justify their remarks, but also the documents and materials on which they were seeking to rely, then automatically the case must go for trial and no interim injunction can be granted. The judgments relied upon by the defendants do set out this principle.

22. At the same time the question to be answered is, whether the plaintiff has made out a *prima facie* case for a direction requiring the defendants to take down the YouTube video as detailed in the para No.20 of the plaint. As noticed above, the plaintiff and the defendants are business rivals. They compete for good students coming to their institutions so that their effort in establishing a reputation of being a good coaching institute would be fortified. Both sides would naturally seek to place in the public domain such aspects of their activities which would encourage students to come to their coaching institutes. The video that has been filed opens up with the defendant No.2 referring to an advertisement published in the "Hindustan Times" by the plaintiff. This advertisement has been filed by the plaintiff at page 25 of its documents in the E-file and is reproduced below for convenience:



Hindustan Times

hindustantimes.com

NEW DELHI/METRO

Thursday, November 11, 2021

Hindustan Times

FIRST VOICE. LAST WORD.

If Results speak of the standard of Teaching

Ranks Range	JEE Advanced 2021 Results From Classroom Programs			JEE Advanced 2020 Results From Classroom Programs			JEE Advanced 2019 Results From Classroom Programs		
	FIITJEE Delhi & NCR Centres	FIITJEE All India	Vidyamandir Classes (VMC)* All India	FIITJEE Delhi & NCR Centres	FIITJEE All India	Vidyamandir Classes (VMC)* All India	FIITJEE Delhi & NCR Centres	FIITJEE All India	Vidyamandir Classes (VMC)* All India
Delhi State Topper	✓	✓	×	✓	✓	×	✓	✓	×
in Top 5 All India Ranks	3	3	0	1	2	0	2	2	0
in Top 10 All India Ranks	4	5	0	3	4	0	2	3	0
in Top 20 All India Ranks	8	10	0	5	8	0	3	5	0
in Top 30 All India Ranks	11	15	0	5	10	2	3	8	2
in Top 50 All India Ranks	14	21	0	9	17	2	6	14	2
in Top 100 All India Ranks	21	31	0	13	30	4	10	30	4

Be it any rank range or total number of selections, you will find that FIITJEE is unmatched. This is the testimony to our commitment towards each & every student enrolling with us.

* Source of data is VMC's Website

Results from FIITJEE Delhi & NCR Centres in various Scholastic Exams in last 3 years	Year	NTSE Scholarships	JSTSE / MVPP	KVPY Fellowships	International Olympiads	NSE Selections	Vidyamandir Classes
	2021	Results awaited	• Delhi Topper • 186 selections	• 5 in Top 10 • 14 in Top 50 • 24 in Top 100 • 243 selections	• 1 Gold Medal • 1 Silver Medal • 2 Students have been selected to represent India in IOAA 2021 • 2 Students have been selected to represent India in IJSO 2021	• 28 in NSEP • 33 in NSEC • 52 in NSEA • 28 in NSEJS	has not published its Results in any scholastic exam anywhere. This may be due to the fact that either they do not have any Results to show or whatever little Results they have, those may be of no significance.
	2020	• 90 selections	• Delhi Topper • 90 selections	• 2 in Top 10 • 8 in Top 50 • 16 in Top 100 • 188 selections	Final Round was NOT held due to COVID-19	• 34 in NSEP • 60 in NSEC • 65 in NSEA • 9 in NSEJS	
	2019	• 127 selections	• Delhi Topper • 114 selections	• 3 in Top 10 • 10 in Top 50 • 20 in Top 100 • 218 selections	• 3 Gold Medals • 1 Silver Medal • 1 Honorable Mention • 5 selections	• 28 in NSEP • 50 in NSEC • 46 in NSEA • 19 in NSEJS	

Then Results Sure Are Speaking Loud & Clear !

Complex process of cleansing, chiselling & polishing **Metamorphoses** each diamond individually to unlock its full value

Children are like rough diamonds, with lot of hidden untapped potential. They also need to go through a complex process of mind tuning, mentoring & grooming to unravel their true potential. This winning process is Metamorphosis of Sorts. **Our Students say that "Winning is a habit at FIITJEE". We say its our Culture to create Metamorphosis. FIITJEE's Academic Cult Metamorphosis** channelises your energies to make you think deeper & right, makes your preparation simpler, straightforward, and free from tension & stress. In the process you unravel your deepest potential & get the best possible rank.

Do you want your son & daughter to undergo the transformation they deserve ? **Give them the FIITJEE advantage.**

Where winning is a habit !

FIITJEE

29 YEARS OF INNOVATION, SINCERITY, ETHICS, CONSISTENCY & HARD WORK

Please turn over...

The Premier Institute for JEE Main, JEE Advanced, Boards, various Olympiads, KVPY & NTSE

23. If a competitive performance has been listed by the plaintiff to show their better performance, then a response to the advertisement by way of the

video is to be seen as a counter advertisement. Thus, what is good for the goose should be equally good for the gander. Though neither side has argued on freedom of commercial speech, and stressed on freedom of speech under Article 19(1)(a) of the Constitution, this Court has considered the issue from that angle as here the issue relates to claims made publicly by the parties in respect of their services and both are competitors in the same field of business. Hence, the issue is not merely of freedom of speech but of freedom of commercial speech.

24. Competitive advertisements are permissible as held in ***Tata Press Limited Vs. Mahanagar Telephone Nigam Limited and Others*** (1995) 5 SCC 139, as advertising is essential for economic activity. It informs the consumers of the existence of various goods and services, the quality of these products and services, the product origin etc. It also builds up reputation. It is in this context that the Supreme Court held as below:

> *"24. Examined from another angle, the public at large has a right to receive the "Commercial speech". Article (19) (1) (a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a lifesaving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.*

> *25. We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution."*

25. Having said that, there is however a limitation to the exercise of this commercial free speech (also see ***Tata Sons Limited Vs. Greenpeace International)*** (supra). While engaging in advertising once own products, care is to be exercised to avoid disparagement of another's products or denigration of the goodwill and reputation built by a competitor. Malicious falsehood cannot become freedom of speech. The learned senior counsel for the plaintiff urged that because the video was in response to a comparative advertisement issued by the plaintiff, the content of the video was malicious. However, no such inference can be drawn, as there are portions in the video which relies on some material on the basis of which the defendants plead justification.

26. Since it is the case of the plaintiff that the video is in response to the advertisement of the plaintiff, the video though of some length can also be considered as an audio-visual advertisement of the defendants, to assure their students and their parents of the quality of education imparted in their institutions. The content of the video would then have to be assessed on the three Tests that have been laid down by the Division Bench of this court in ***Pepsi Co., Inc. v. Hindustan Coca Cola Ltd.***, 2003 SCC OnLine Del 802 to decide the question of disparagement, namely (i) intent of the commercial; (ii) manner of the commercial; (iii) storyline of the commercial and the message sought to be conveyed by the commercial. A fourth factor has been included by the Co-ordinate Bench of this court in ***Reckitt Benckiser India***

Private Limited Vs. Hindustan Unilever Limited 2021 SCC OnLine Del 4896 viz., (iv) while glorifying its product, an advertiser may not denigrate or disparage a rival product.

27. While some latitude is to be given for hyperbole and commendatory expression for oneself with an attempt to show down the competitor, there can be no license to anyone to denigrate the competitor. The courts have protected parties who have been at the receiving end of such negative advertisements.

28. There can be no doubt that justification would require to be established by evidence. What would be the impact of a video being shown on social media and shared and viewed by people several times over, on a common and ordinary person who is an anxious parent wanting to send his/her child to enter the portals of reputed engineering colleges and looking for a coaching institute, may have to be considered. But the view taken by this court in ***Tata Sons Limited Vs. Greenpeace International*** *(*supra) is that wider viewership or a degree of permanence characteristic of publication on the internet would not change the essential fact that it too is but a medium of expression and calls for no different standards for grant of interlocutory injunction. There is no reason for this Court to take a different view.

29. So the only question to be seen is, whether the video in question contains any disparagement or defamatory matter. It is then apparent in the video, that the defendant No.2 has used very offensive words alleging that the plaintiff would 'kidnap" and take the students "hostage" and put them under such pressure and indulge in "extortion"—allegations that are serious, as indicating that the plaintiff has no qualms in indulging in crime for money.

30. Whether there is one disgruntled teacher or several, as are the varying stances of the plaintiff and the defendants, there may be some material for the defendants to have claimed that the teachers were dissatisfied. It would be an inquiry during trial whether, on whatever material the defendants had relied on, such an inference can be drawn and statements made. Similarly, criticizing the refund policy on the basis of the decisions of the Consumer Disputes Redressal Forum *prima facie* does not appear to be defamatory and that too of a scale which would require immediate directions to pull down the video. Criticism of the various programs of the plaintiff in this video and the elaboration of how the defendant No.1 conducts its programs would also be only in the nature of competitive advertisement. The comparison would naturally be tested during the trial to determine whether the inferences drawn were justified.

31. But, to accuse someone of kidnapping, extortion etc. is different. Use of such strong words is inappropriate to say the least. It directly impacts the parent who would be discouraged with such negative description of the plaintiff. These words *ex facie* are untrue. These words cannot be allowed to remain. This Court, however, does not agree with the submission of the learned senior counsel for the plaintiff that removal of the offensive words will not be sufficient to meet the ends of justice at this interim stage.

32. In conclusion, while the defendants have established that the balance of convenience is in their favour as no harm would be caused to the plaintiff if the video remained, that cannot be compensated through award of damages, this Court is of the considered view that the defendants will have to take down the aforementioned sentences in the video and ensure that no

version with such content is in circulation, depicting the plaintiff as a set of criminals.

33. Accordingly, an affidavit shall be filed by the defendants to this effect that they have edited out the aforementioned offending words and sentences that have been used in the video. The same be filed within four weeks.

34. For the present therefore, there are no directions to the defendant No.9/YouTube.

35. The application is disposed of, in these terms.

CS(OS) 656/2021

36. The defendants may file written statement(s) to the suit within thirty days with an advance copy to the opposite side. The defendants shall also file the affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.

37. The plaintiff is at liberty to file replication(s) to the written statement(s) filed by the defendants within thirty days of the filing of the written statement(s). The replication(s) shall be accompanied by the affidavit of admission/denial in respect of the documents filed by the defendants, failing which the replication(s) shall not be taken on record.

38. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

39. List before the court for framing of issues on 10th May, 2022.

40. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

FEBRUARY 16, 2022/'bs'