IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.3967 OF 2024
IN
WRIT PETITION (L) NO.9792 OF 2023

Kunal Kamra .... Applicant.

In the matter between

Kunal Kamra .... Petitioner
V/s.
Union of India ..... Respondent.

WITH
INTERIM APPLICATION (L) NO.4178 OF 2024
IN
WRIT PETITION (L) NO.14955 OF 2023

Editors Guild of India .... Applicant/Petitioner
V/s
Union of India & Others ....Respondents.

WITH
(CIVIL APPELLATE JURISDICTION)
INTERIM APPLICATION (ST) NO.3819 OF 2024
IN
WRIT PETITION NO.7953 OF 2023

Association of India Magazines .... Applicant
(Original Petitioner)
V/s

Union of India .... Respondent.

Mr Navroz Seervai, Senior Advocate with Mr Darius Khambata, Senior Advocate, with Arti Raghavan, i/b Meenaz Kakalia, for the Petitioner/Applicant in IAL/3967/2024 in Writ Petition (L) No 9792 of 2023.

Mr Shadan Farasat (through VC) a/w Mr. Harshit Anand with Hrishika Jha & Natasha Maheshwari, i/b Bimal Rajsekhar for the Petitioner/Applicant in IAL/4178/2024 in WPL/14955/2023

Mr Gautam Bhatia (through VC), with Radhika Roy, i/b Aditi Saxena for the Petitioner/Applicant in IAST/3819/2024 in WP/7953/2023

Mr Tushar Mehta, Solicitor General, (through VC) with Devang Vyas, Additional Solicitor General, Rajat Nair, Gaurang Bhushan, Aman Mehta, DP Singh, Savita Ganoo, Anusha Amin, Vaishnavi, Bhuvanesh Kumar, Additional Secretary, Vikram Sahay, Diretor & Ritesh Kumar Sahu, Scientist D, for the Respondent-UOI in all the above matters.

CORAM : A.S. CHANDURKAR, J.

Dates on which the submissions were heard : 28.02.2024, 29.02.2024 & 05.03.2024
Date on which the opinion is expressed : 11.03.2024

P.C.:-

1] The present proceedings have been placed for rendering an opinion in accordance with the provisions of Chapter-I, Rule 7 of the Bombay High Court Appellate Side Rules, 1960 read with Section 98 of the Code of Civil Procedure 1908 and Clause 36 of the Letters Patent of the Bombay High Court in view of the divergent decisions rendered on 31/01/2024 by the learned Judges constituting the Division Bench

that heard Writ Petition (L) No.9792 of 2023, Writ Petition (L) No.14955 of 2023 and Writ Petition No.7953 of 2023. In the aforesaid writ petitions the validity of Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (for short, the Rules of 2021) as amended by Rule 3(i)(II)(A) and (C) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023 (for short, the Amendment Rules of 2023) had been challenged. G.S. Patel J struck down the amendment as made in 2023 to Rule 3(1)(b)(v) of the Rules of 2021 and proceeded to allow the writ petitions. Dr. Neela Gokhale J held that the impugned Rule was valid and proceeded to dismiss the writ petitions. It is in the said backdrop that these writ petitions have been placed for rendering an opinion on the point/points of difference expressed by the learned Judges constituting the Division Bench.

Prelude to the reference:

2] After the divergent views were expressed by the learned Judges, the petitioners filed Interim Applications in each Writ Petition with a

prayer to injunct the respondents from notifying the Fact Check Unit – FCU as proposed to be constituted for a period of four weeks. On 06/02/2024, the said Interim Applications were placed before the Division Bench since a request was made to re-constitute the said Division Bench to hear the Interim Applications. To enable written submissions to be filed, the proceedings were adjourned to 08/02/2024. On 08/02/2024, the following order was passed:-

" PC:-

1. On 31st January 2024 we each rendered separate opinions on the main challenges before us. One of us, GS Patel, J held for the Petitioners. The other Neela Gokhale, J held that the Petitions ought to be dismissed.

2. We have in our previous order briefly noted the points of divergence. Indeed, at the cost of repetition there is divergence on every aspect.

3. Before us today are three Interim Applications for continuance of what might best be described as a statement made on behalf of the Union of India. This was first made in April 2023 and has been continued since. There have been at least a dozen such continuances. This was not an injunction granted on merits at a hearing on an application for interim relief. It was simply a statement noted and one that continued. We decided the main challenge in the backdrop of this statement being continued.

4. Mr Mehta, learned Solicitor General of India appearing for Union of India, states that he does not have instructions to continue

that statement till the points of difference on the Writ Petitions are decided by the third Judge to whom these differences are referred for his/her opinion.

5. We accept as a correct principle in law that once the third Judge has rendered his opinion on the points of distinction between us, we would have to reassemble to pronounce the judgment per majority.

6. The question is as to the interim relief and whether we can or even are both agreed that the previous statement must be compelled to continue until the third Judge renders his opinion. There is no agreement between us on a continuance until the end of the reference to the third Judge on the differences in opinion on the main Writ Petitions.

7. These Interim Applications would, in our view, need to be decided by the referenced Judge as well since we are not between ourselves in agreement between us on the continuance of the previous status.

8. We are however agreed that independent reasons or opinions within opinions in regard to interim relief are not necessary. The reason we say this is that we at no point considered on merits any application for interim relief. That is being pressed only now after the two conflicting views have been rendered.

9. Mr Seervai submits is to hold that there is presumption that only because two judges disagree on the merits of a main challenge, therefore they disagree on interim relief would set a dangerous precedent. But we are not suggesting, let alone holding, anything of the kind. We specifically state that we are not between ourselves even today agreed on the question of the continuance of ad-interim or interim relief at least not beyond the period for which Mr Mehta is willing to make a statement today.

10. Accordingly, there is no question of setting any kind of a precedent.

11. It only needs to be noted for good order that the point of

> difference between us on the question of interim relief is whether having regard to all circumstances, this previous statement should continue as an order of a Court.
>
> 12. Mr Mehta states on instructions that the statement can continue until the third Judge takes up the Interim Application. He clarifies that it is at this point unknown what will transpire on that date. He has no instructions to make a further commitment before us today.
>
> 13. Accordingly, we note that Mr Mehta's statement will continue until the three Interim Applications are taken up for consideration by the third reference Judge. Before us, all agree that 'taken up' means taken up for consideration or hearing, and not just listed for directions for scheduling or other routine case management directions."

3] The order dated 08/02/2024 passed by the Division Bench records that a statement was made initially on 27/04/2023 that the FCU as contemplated by Rule 3(1)(b)(v) as amended would not be notified until 05/07/2023. That statement was thereafter continued on various occasions during pendency of the proceedings and it was noted that no injunction was granted on merits. The order dated 08/02/2024 in paragraph 7 states that the Interim Applications would be required to be decided by the Reference Judge since the learned Judges constituting the Division Bench could not agree as to whether the status operating ought to be continued. In paragraph 8, it has been stated in clear terms that at no point of time were the applications for

interim relief considered on merits and that the same were being pressed only after the conflicting views were rendered. In paragraph 11 of the said order, the point of difference as indicated on the question of interim relief was "whether having regard to all circumstances, this previous statement should continue as an order of the Court". The order dated 08/02/2024 thus states that the point of difference is whether the statement initially made on behalf of the Respondents and recorded on 27/04/2023 should continue as an order of the Court.

Submissions on behalf of the Applicants:

4] Mr Navroz Seervai, the learned Senior Advocate for the applicant in Interim Application (L) No. 3967 of 2024 invited attention to the order dated 27/04/2023 wherein a statement made on instructions of the Respondents was recorded that the FCU contemplated by the Rule under challenge would not be notified until 05/07/2023. Referring to various other orders passed in the proceedings, it was submitted that on 29/09/2023 the learned Solicitor General had stated that the previous statement made would continue until the judgment was delivered. The Division Bench pronounced its judgments on

31/01/2024. On that day, the statement made earlier was continued for a further period of ten days. Finally, by the order dated 08/02/2024, the statement made was continued until the present Interim Applications would be taken up for consideration by the Reference Judge meaning thereby that the statement was to continue till the Interim Applications were actually taken up for consideration or hearing. It is thus submitted that the statement that the FCU would not be notified having been initially made on 27/04/2023 and the same having continued to operate till date, such statement ought to be further continued till the opinion by the Reference Judge would be rendered. There did not appear any justifiable reason not to continue the said statement till the reference was decided.

5] The learned Senior Advocate thereafter referred to various relevant statutory provisions of the Information Technology Act, 2000 (for short, Act of 2000) and especially Sections 79 and 87 thereof. The exemption from liability of an intermediary in certain cases was subject to the provisions of sub-sections (2) and (3) of Section 79. While sub-section (2) of Section 79 provided for the contingency when an intermediary would not be liable for any third party information, data

or communication link made available or hosted by him, sub-section (3) of Section 79 prescribed a contingency where an intermediary could be liable for any third party information, data or communication link made available or hosted by him. Thereafter, referring to the provisions of the Rules of 2021 and especially Rule 7 thereof it was submitted that if an intermediary fails to observe the Rules of 2021 then the provisions of Section 79(1) of the Act of 2000 would not be applicable to such intermediary who would thus be liable for punishment under any law for the time being in force including the Act of 2000 and the Indian Penal Code.

6] Briefly referring to the opinions expressed by the learned Judges, it was submitted that while G.S. Patel, J. held Rule 3(1)(b)(v) of the Rules of 2021 as amended by the Amendment Rules of 2023 to be violative of Article 19(1)(a) of the Constitution of India alongwith Article 19(1)(g) and Article 14 as well as being *ultra vires* Section 87(1) of the Act of 2000, Dr. Neela Gokhale, J. upheld the aforesaid Rule through the process of reading in and reading down. It was submitted that the apprehensions expressed by the Petitioners as regards the likely effect of implementation of the impugned Rule were

held to be justified and they could not be swept away as frivolous or motivated. The fact that validity of the said Rule was required to be upheld through an interpretative process of reading in and reading down was sufficient to hold that the presumption as regards constitutionality of the said provision would not apply in the present case. In that regard reliance was placed on the order dated 14/08/2021 passed in Writ Petition (L) No.14172 of 2021 (*Agij Promotion of Nineteenonea Media Pvt. Ltd. & Ors. vs Union of India & Anr.*) wherein by way of interim relief, the operation of sub-rules (1) and (3) of Rule 9 of the Rules of 2021 had been stayed. This was a relevant factor that deserved consideration for continuing the statement as made on behalf of the Respondents of not notifying the FCU till the reference was decided.

7] It was then submitted that the Blocking Rules of 2009 as well as the Press Information Bureau – PIB were in place and any potential violation of the provisions of Section 79 of the Act of 2000 could be taken care of under those provisions. No material was brought on record to indicate any adverse instance since April 2023 in the absence of the FCU. This would indicate, prima facie, that existing subordinate legislation was sufficient to take care of any situation arising in the

interregnum till the reference was decided without the FCU being notified. It was also urged that the expressions "fake, false or misleading" were vague without there being any manner of identifying the same. Such identification of any message or information as fake, false or misleading would be done by the FCU of the Central Government alone as a sole arbiter with regard to the business of the Government. "Business of the Central Government" was also an undefined expression and would cover each and every aspect involving the Central Government thus resulting in its arbitrary use. It was therefore urged that since a strong prima facie case had been made out by the applicant coupled with the fact that the FCU had not been notified till date, albeit in view of the statement made by the learned Solicitor General, the said position ought to continue till the reference was decided.

8] Mr. Shadan Farasat, the learned Advocate appearing on behalf of the applicant in Interim Application (L) No.4178 of 2024 adopted the submissions made by Mr. Navroj Seervai, learned Senior Advocate and added that the Central Government through its FCU was made the sole arbiter of determining as fake or false or misleading any message or

piece of information as desired. In a democratic set up the general view of the public was also relevant and same could not be done away with or else it would result in grave arbitrariness. He too prayed that the interim relief as sought in the Interim Application be granted.

9] Mr. Gautam Bhatia, the learned Advocate appearing for the applicant in Interim Application No.3819 of 2024 also adopted the submissions made by the learned Senior Advocate as referred to hereinabove. He reiterated the aforesaid legal aspects to urge that besides a prima facie case being made out, the balance of convenience was in favour of the applicant in the light of the fact that the FCU had not yet been notified. It was thus urged that on such prima facie case being made out by the applicant, the burden of sustaining constitutionality of the impugned provision would shift on the non-applicants. Hence till the said issue was decided, the position as prevailing ought to be continued.

<u>Submissions on behalf of the non-applicants:</u>

10] Mr. Tushar Mehta, the learned Solicitor General opposed the

prayers made in the Interim Applications. It was submitted that there was no intermediary before the Court raising a challenge to the provisions of Rule 3(1)(b)(v) of the Rules of 2021 as amended and that the applicants were mere users. In absence of any challenge to the amended Rule being raised by any intermediary, there was no basis whatsoever to grant the interim relief as prayed for. Referring to various provisions of the Act of 2000 including the provisions of Section 2(v) defining "information", Section 2(w) defining "intermediary", Sections 69A and 79 thereof, it was contended that the impugned Rule prescribed the least restrictive way of dealing with fake, false or misleading information. An intermediary on being informed that a piece of information was either fake, false or misleading was merely required to place a disclaimer with regard to such information which would then enable "safe harbour" of the intermediary to continue. The Rule was aimed only at dealing with "business of the Central Government" strictly and it did not aim to prevent satire, sarcasm or political comments nor was it intended to muzzle political views of any kind. The business of the government was as mentioned in the Rules of business and there was no manner whatsoever of travelling beyond the same while seeking to implement the said Rule.

Referring to the Rules of 2021 as amended in 2023, it was submitted that under Rule 3, an intermediary was required to exercise due diligence in such matters. A grievance redressal mechanism at the level of an intermediary was also provided. Further, in view of Rule 7 thereof, it was clear that non-observance of the said Rules would affect the intermediary alone and not any individual user. The effect of fake, false or misleading information going unchecked was likely to result in greater public mischief and had the potential of affecting the public at large. On the other hand, the chilling effect, if any, as apprehended by the applicants was with regard to few individuals on social media platforms. Thus larger public interest did not warrant grant of any interim relief as prayed for by the applicants. It was further submitted that for dealing with an extreme situation, Section 69A of the Act of 2000 was available. What was contemplated under the amended Rules was the least restrictive mode and therefore it could not be said that the said provision was either disproportionate or so obnoxious to warrant a preventive order being passed. It was submitted that at this stage, no jurisdictional aspects were required to be gone into and since the impugned Rule merely required notifying the FCU, there was no case made out to grant any interim relief.

Rejoinder by the Applicants:

11] In rejoinder, the learned Senior Advocate for the applicant submitted that even at this stage, basic jurisprudential principles were relevant since the impugned Rule had been found to be violative of Articles 14 and 19(1)(a) of the Constitution of India by one learned Judge. Since the impugned Rule was not saved by the provisions of Article 19(2) and the expression "misleading" was vague, the applicant was entitled for grant of the interim relief as prayed for. Under the Rules of 2021 as amended in 2023, the issuance of any disclaimer as urged by the learned Solicitor General was not envisaged. On the other hand, it was not possible for an intermediary to modify any piece of information in view of Rule 3(1)(b) of the Rules of 2021 by issuing such disclaimer.

The learned Advocate appearing for the applicant in Interim Application (L) No.4178 of 2024 in addition submitted that the issuance of disclaimer would itself amount to a restriction in violation

of Article 19(2) of the Constitution of India. For such restriction to be reasonable, it was necessary for it to fall under any of the eight heads of Article 19(2). However, a disclaimer would not fall under any of the aforesaid heads and therefore the submission made on behalf of the non-applicants that a disclaimer could be issued would not satisfy the legal test.

The learned Advocate appearing for the applicant in Interim Application (St) No.3819 of 2024 submitted that the balance of convenience was in favour of the applicant. The Government could not be treated to be the sole arbiter for determining whether any piece of information was true or was fake, false or misleading. Since the PIB was in place, any situation contemplated could be taken care of by it during pendency of the writ petitions. Hence, it was urged that interim relief as prayed for ought to be granted.

12] On 05/03/2024 assistance of learned Counsel for the parties was sought on the ambit of Clause 36 of the Letters Patent while rendering an opinion on the point of difference referred for consideration. It was urged by all learned Counsel that Clause 36 was

merely an enabling provision for rendering an opinion on the point of difference and that jurisdiction under Article 226 of the Constitution of India stood preserved for being invoked by the Reference Judge.

It is in the aforesaid backdrop that the point of difference as to "whether having regard to all circumstances the earlier statement made on behalf of the Respondent should continue as an order of the Court?"

Consideration:

13] Since the prayer made on behalf of the applicants is to continue the statement made on behalf of the Union of India that the FCU would not be notified till the time the writ petitions were to be decided, it would be necessary to prima facie consider as to whether applicants have made out a case for the Court to direct that statement to continue as an order of the Court. Briefly, according to the applicants, Rule 3(1)(b)(v) of the Rules of 2021 as amended in 2023, falls foul of Articles 14 and 19(1)(a) of the Constitution of India. The expressions "fake, false or misleading" are vague and undefined thus being susceptible to gross abuse and misuse. Similarly, the expression "business of the Central Government" has been stated in wide terms which would encompass each and every activity of the Central Government resulting in the Rule

travelling beyond the empowering Section which is Section 87 of the Act of 2000. The amendment to Rule 3(1)(b)(v) having been held to be *ultra vires* by one of the learned Judges, a strong case had been made out to prevent the Union of India from notifying the FCU till an opinion was expressed by the Reference Judge. Having not notified the FCU since April 2023, there was no justification whatsoever to now notify the same especially when the validity of the said Rule itself was being examined.

On the other hand, the non-applicants seek to contend that by amending Rule 3(1)(b)(v) of the Rules of 2021 the least restrictive mode has been resorted to keeping in mind the relevant constitutional provisions. It was only the business of the Central Government that was sought to be brought within the purview of the FCU and the object was to identify fake, false or misleading information in that regard. There was no object of either preventing or controlling satire, comedy or diverse political opinions. The field sought to be covered therefore was restricted and not as wide as canvassed by the applicants. In absence of any intermediaries raising a challenge to the aforesaid provisions, there was no reason not to notify the FCU since it was only

few users who sought to urge a likely chilling effect on the exchange of information. Moreover, issuance of a disclaimer by an intermediary was sufficient to continue the "safe harbour" under Section 79 of the Act of 2000. Considering the fact that FCU had not been notified only in view of the statement made on behalf of the Union of India and that there was no restraint order passed on merits coupled with the fact that the said provision was held to be *intra vires* by one of the learned Judges, there was no reason whatsoever to grant any interim relief in favour of the applicants.

14] For considering the request as made by the applicants in the Interim Applications, it would be necessary to first examine as to whether a strong prima facie case has been made out by the applicants.

In this regard, it would be necessary to scan the relevant averments in the writ petitions. In Writ Petition No.7953 of 2023 (*Association of India Magazines vs Union of India*) the Petitioner states that members of Association are users of social media and the probable "chilling effect" that would flow from the amended provisions could affect the rights of users as well as general public. Members of the

Association would engage in self- censorship and avoid putting reportage on Union Government (ground-k). Further, in the absence of gradation in the penalty based on the nature of seriousness of the violation of the impugned Rule, it could lead to over-zealous implementation of the Rules by intermediaries which would restrict free speech of its users (ground-n)

In Writ Petition No.14955 of 2023 (*Editors Guild of India vs. Union of India and Others*) the Petitioner is a non-profit organization registered under the Societies Registration Act, 1860. It has been pleaded in paragraph 33 of the writ petition that if the impugned Rule is implemented, its effect would be to impoverish political discourse and skew it unconstitutionally in favour of a version of 'truth' controlled by the Central Government. Further, it is pleaded in paragraph 47 that by removing or muting politically dissident speech from circulation, citizen–voters' right to access a plurality of views and narratives about their elected government as well as right of citizens and journalists to enter the fray of political discourse would be affected. In paragraph 54, it is further pleaded that by removing from discourse all sides other than the side of the Central Government there would be an unreasonable restriction with regard to journalistic and

political speech. The manner in which the provisions of Articles 14, 19 and 21 of the Constitution of India would stand violated has also been pleaded besides the fact that the impugned Rule travels beyond the provisions of Section 87 of the Act of 2000.

In Writ Petition (L) No. 9792 of 2023, the Petitioner claims to be a comedian in the primary form of social and political satire. As per ground-J in the writ petition it is pleaded that the Petitioner's ability to engage in political satire would be unreasonably and excessively curtailed if his consent were to be subjected to a manifestly arbitrary, subjective "fact check" by a hand-picked unit designated by the Central Government. In ground-K, it has been pleaded that social media platforms are the primary medium through which political satirists/comedians like the Petitioner share their art. In paragraph 15, it has been stated that after the draft Rules were released for the purpose of public consultation, various stake holders had raised objections but the Petitioner did not prefer any objection.

15] Broadly and prima facie, the pleadings referred to hereinabove indicate that the applicants are users of social media in contradistinction to defined intermediaries under Section 79 of the

Act of 2000. Likelihood of the exchange of information in the form of political discourses or comments, political satire etc. being possibly targeted if the FCU is notified is apprehended. The possibility of causing a "chilling effect" on users of social media is also apprehended in this regard. It is the submission made on behalf of the non-applicants by the learned Solicitor General that the impugned rule intends only to deal with government business in its strict sense and that it did not aim or attempt to prevent satire, sarcasm or political comments. Political views are not sought to be muzzled. At this prima facie stage, in my view, the stand taken by the non-applicants allays the apprehension expressed by the applicants that under the garb of "Central Government business", the FCU would prevent expression of political views or comments, sarcasm, political satire or dissent.

16] It is to be kept in mind at this stage that the FCU has not yet been notified. The prayer that the statement made on behalf of the non-applicants as recorded on 27/4/2023 that the FCU would not be notified till the challenge was decided be continued, in a way, results in preventing Rule 3(1)(b)(v) from operating after its amendment. The Supreme Court in *Bhavesh D. Parish and others vs. Union of India and*

Another (2000) 5 SCC 471 has cautioned that merely because a statute comes up for examination and some arguable point is raised which persuades the Court to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. Unless the provision is manifestly unjust or glaringly unconstitutional, the Courts must show judicial restraint in staying the applicability of the same. In the said case, the provisions of Section 45-S of the Reserve Bank of India Act, 1934 were under challenge and operation of the said provisions had been stayed by the High Court. The principle laid down therein would have to be borne in mind.

In *Health for Millions vs. Union of India and others* (2014) 14 SCC 496, the aforesaid decision has been referred to and it has been reiterated that in matters involving challenge to the constitutionality of any legislation enacted and Rules framed thereunder, the Court should be extremely loath to pass an interim order except when the Court is fully convinced that the particular enactment or Rule framed is ex-facie unconstitutional and factors like balance of convenience, irreparable injury as well as public interest are in favour of passing an interim order.

17] While considering the prayer as made in the interim applications, the aspect of presence of cause of action that gives a right to raise such challenge is also material. The Supreme Court in *Kusum Ingots and Alloys Limited Vs. Union of India* (2004) 6 SCC 254 has held that cause of action for challenging the validity of legislation would arise only when the provision in question is implemented giving rise to civil or evil consequences to the Petitioner. Relying upon this decision, the Division Bench in *The Association of the Traders Vs. Union of India and Others* 2015 SCC OnLine Bom 4811 has held that passing of a legislation would give rise to a cause of action only when the provisions of such legislation on being implemented give rise to civil or evil consequences. The challenge raised must be based on certain and definite set of facts and not on an apprehension. These decisions have been referred to by the non-applicants in their affidavit in reply dated 06/06/2023 filed in Writ Petition (L) No.9792 of 2023.

18] Reliance was placed by Mr. Seervai, learned Senior Advocate on the decision in *Agij Promotion of Nineteenonea Media Private Limited and others* (supra) to urge that operation of Rule 9(1) and (3) of the Rules of 2021 had been stayed by an interim order having prima facie

found that the said sub-rules infringed Article 19(1)(a) of the Constitution of India.

It is true that the provisions of Rule (1) and (3) as regards observance and adherence to the Code of Ethics were prima faice found to be infringing the guarantee of freedom of speech and expression resulting in its operation being stayed. It is however to be noted that while considering challenge to Rule 14 of the Rules of 2021 prescribing constitution of an Inter-Departmental Committee for hearing complaints with regard to contravention of the Code of Ethics the Court found that the said Committee had not been constituted nor had the authorised officer under Rule 13(2) been appointed. It was held that there was no urgency to go into said aspect for that reason. Thus on the ground that the oversight mechanism that would have been made effective under Rule 14 had not come into effect, the Division Bench merely granted liberty to the Petitioners to seek relief as and when the Inter-Departmental Committee was constituted.

This interim order in fact holds that since the Inter-Departmental Committee was yet to be constituted, the challenge to Rule 14 could be considered at a later stage. Hence said order does not take the case of the applicants any further. Similarly, the order dated 04/08/2017

passed in Writ Petition No.2797 of 2015 (*The State of Maharashtra vs. Vijay Ghogre and Others*) is distinguishable as the Referral Bench itself had stayed the impugned order passed by the Maharashtra Administrative Tribunal till an opinion was rendered by the Reference Judge.

19] In my view, the aforesaid factual as well as fundamental aspects have material bearing on the prayer as made by the applicants seeking to restrain the non-applicants from notifying the FCU. Though an arguable case as regards validity of Rule 3(1)(b)(v) of the Rules of 2021 as amended in 2023 is made out especially when the said Rule has been held to be ultra-vires Articles 14 and 19(1)(a) of the Constitution of India as well as going beyond the empowering provision under the parent statute by one learned Judge, the balance of convenience tilts in favour of the non-applicants in view of the categorical submission made by the learned Solicitor General that political opinions, satire and comedy are aspects not sought to be linked to "the business of the Central Government." Similarly, notifying the FCU would not result in an irreversible situation for the reason that any action taken post notifying the FCU would always be

subject to the validity of Rule 3(1)(b)(v) which is under challenge. This situation when pitted against larger public interest leads me to opine that grave and irreparable loss is not shown to result if the FCU is notified warranting the passing of an interim direction of not notifying the FCU till the challenge to Rule 3(1)(b)(v) of the Rules of 2021 as amended in 2023 is finally decided.

20] For aforesaid reasons, in my opinion, no case has been made out to direct that the statement made on behalf of the non-applicants that the FCU would not be notified be continued during the pendency of the present proceedings as an order of the Court. It is clarified that this opinion is only on a prima facie consideration of the issues that arise and has been expressed in the context of the prayers made in the interim applications. The Interim Applications be now placed before the Referral Bench for appropriate orders.

[A. S. CHANDURKAR, J.]

BHARAT DASHARATH PANDIT

Digitally signed by BHARAT DASHARATH PANDIT
Date: 2024.03.11 17:19:22 +0530