

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Wednesday, the Twenty Fourth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice N.KIRUBAKARAN
and
The Hon`ble Mr.Justice S.S.SUNDAR

WP(MD) No.7855 of 2019

S.MUTHUKUMAR ... PETITIONER(S)

Vs

- 1.THE TELECOM REGULATORY AUTHORITY OF INDIA (TRAI),
MAHANAGAR DOOR SANCHAR BHAWAN,
(NEXT TO ZAKIR HUSAIN COLLEGE), JAWAHARLAL NEHRU MARGE
(OLD MINTO ROAD), NEW DELHI 110 002.
- 2.THE SECRETARY, UNION OF INDIA,
MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY,
SANCHAR BHAWAN, NO.20, ASHOKA ROAD, NEW DELHI 110 001.
- 3.THE SECRETARY,
MINISTRY OF TELECOM OF INFORMATION TECHNOLOGY,
GOVT. OF TAMIL NADU, SECRETARIAT,
FORT ST. GEORGE, CHENNAI 600 009.
- 4.THE DISTRICT COLLECTOR,
MADURAI DISTRICT, MADURAI.
- 5.THE COMMISSIONER OF POLICE,
MADURAI CITY POLICE, MADURAI.
- 6.RAJ MISHRA,
BUSINESS HEAD AT TIK TOK,
(FORMERLY MUSICALLY), NEW DELHI.
- 7.THE SECRETARY,
MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY,
GOVERNMENT OF INDIA,
ELECTRONICS NIKETAN, 6, CGO COMPLEX,
LODHI ROAD, NEW DELHI - 110 003
- 8.THE SECRETARY,
MINISTRY OF INFORMATION AND BROADCASTING,
SHASTRI BHAWAN, NEW DELHI - 110 001.

(*) **9.M/S.BYTEDANCE (INDIA) TECHNOLOGY PRIVATE LIMITED,**
REGISTERED OFFICE:1/12, FLOOR 10,
EVEREST PANDIT MADAN MOHAN MALVIYA MARG, TARDEO,
MUMBAI - 400 034

(*)R7 AND R8 ARE SUO MOTU IMPEADED VIDE
COURT ORDER DATED 16.04.2019

(*)R9 ISUO MOTU IMPEADED VIDE
COURT ORDER DATED 24.04.2019

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a Writ of Mandamus directing to the respondents 1 to 5 to take appropriate actions against 6th respondent and his men and ban the Tik Tok mobile app which was containing degrading culture and encouraging pornography besides causing pedophiles and explicit disturbing content, social stigma and medical health issue between teens and take necessary action by considering the petitioners representation dated 24.02.2019

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.K.NEELAMEGAM, Advocate for the petitioner and of Mr.P.MURUGAPPAN, Central Government Standing Counsel for R1 to R3, and Mr.A.K.BASKARAPANDIAN, Special Government Pleader for R4 and R5, and Mr.ISAAC MOHANLAL, learned Senior Counsel for R6 and R9, and Mr.ARVIND P.DATAR, learned Senior Counsel as Amicus Curiae and Mr.M.C.Swamy, learned Counsel and Mr.Purushothamman, learned Counsel, the court made the following order:-

[Order of the Court made by **N.KIRUBAKARAN, J.**]

This Court suo motu impleads M/s.Bytedance (India) Technology Private Limited, Registered Office:1/12, Floor 10, Everest Pandit Madan Mohan Malviya Marg, Tardeo, Mumbai - 400 034, as 9th respondent and Registry is directed to carry out necessary amendments in the petition.

2. This Court, by order, dated 03.04.2019, prohibited the download of Tik Tok Mobile Application and also prohibited the Medias from telecasting the videos made using Tik Tok Mobile Application.

3. Heard Mr.K.Neelamegam, learned Counsel for the petitioner, Mr.Isaac Mohanlal, learned Senior Counsel appearing for the respondents 6 and 9, Mr.Arvind P.Datar, learned Senior Counsel as Amicus Curiae and Mr.M.C.Swamy, learned Counsel and Mr.Purushothamman, learned Counsel.

4. Mr.K.Neelamegam, learned counsel for the petitioner would argue that numerous obscenity and inappropriate videos are still in circulation through Tik Tok platform and opposed vacating interim order. With regard to the contents, Mr.Isaac Mohanlal, learned Senior Counsel appearing for respondents 6 & 9 would refer to paragraphs 5 to 12 of the company's counter affidavit would submit that if there are any inappropriate contents, the company moderates using the Artificial Intelligence Moderation Machine at the first level and Human Moderation in next three levels. If anyone has

grievance, there is a Grievance Officer, who can be directed to conduct an enquiry. He would also submit that even if any inappropriate or obscene is posted, immediately, the Mobile Application will come into play and Artificial Intelligence Moderation Machine and Human Moderation would act as filters.

5. Mr.Arvind P.Datar, learned Senior Counsel would submit that the Information Technology Act, 2002 and Rules and Regulations, are comprehensive enough to address any problem. He also referred to the provision of Information of Technology Act, 2002, particularly, Sections 67(A) and 69(A) and the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 and the Information Technology (Intermediaries Guidelines), Rules, 2011. By referring to some of the provisions of the Rules and the Act, the learned Senior Counsel further submitted that adequate machinery is provided under the Act and Rules to deal with the intermediaries, who fail to act or respond to a compliant or request made by any person, regarding any negative or inappropriate contents, that has been transmitted through the platform.

6. Mr.M.C.Swamy, learned Counsel as a parent/grandparent, would submit before this Court that the children and teenagers, who are vulnerable to pornography are sharing their personal videos unmindful of the possible of consequences causing permanent damages / social stigma.

7. From the above arguments, this Court expresses a serious concern over the possibility of woman and children of our country being sexually abused by video sharing and some predators are exploiting the innocent victims. The learned Senior Counsel for the respondents 6 and 9 has agreed with the same and submitted that the Government should be keen in taking appropriate action in the larger public interest.

8. Having heard the parties, this Court is convinced that Tik Tok Mobile Application is a platform or otherwise called Online Application, which does not have any control over the users. On a perusal of the counter affidavit filed by the respondents 6 and 9, it is evident that the Company has got required Applications, namely, Machine Moderation or Manual Moderation for filtering inappropriate or obscene and negative content of materials posted in the app. Secondly, after the order passed by this Court, the 6th respondent Company is said to have erased six million videos, the contents of which are doubtful.

9. The ninth respondent has filed a detailed reply denying the allegations and highlighting the safety features deployed by them. Para 36 to 40 of the reply are relevant and hence extracted as below:

<http://www.judis.nic.in>

"36..... Thirdly, the Platform in India has implemented industry standard solutions to address problems

relating to pornography and illegal behaviour, including:

(i) App User accepted "Community Guidelines" that educates user to not post, share or promote any of the (i) Harmful or dangerous content, (ii) Graphic or shocking content, (iii) Discrimination or hate speech, (iv) Nudity or sexual activity (v) child safety infringement, (vi) Harassment or cyberbullying, (vii) Impersonation spam, or other misleading content (viii) Intellectual property and workplace content (ix) Other malicious activity like virus, etc.;

(ii) In-app, A report content feature, through which users can instantly report any objectionable content and have the same taken down, the average response time for which is 15 minutes though law provides a window of 36 hours;

(iii) A Grievance Officer located in India duly appointed as per IT Act to handle complaints or other issues faced by a user of the App even without any login to the App;

(iv) TikTok has set up gov@tiktok.com, a private, dedicated channel for local government inquiries. We prioritize content take down requests from the government authorities including law enforcement and expeditiously remove content that violates our Community Guidelines or local laws;

(v) A highly efficient and trained content moderation team that is also located in India with proficiency in 16 Indian languages, which exercises control over content on the Platform in line with international best practices, policies and local laws;

(vi) A TikTok Safety Centre in ten Indian languages, namely, Hindi, Gujarati, Marathi, Bengali, Punjabi, Telugu, Tamil, Kannada, Malayalam, Oriya to ensure that the resources and guidelines are as inclusive as possible. These safety centres guide users, especially parents, through the app;

(vii) Terms of use, Privacy statement, Community Guidelines and appropriate policies that are publicized to all users with regard to conduct on and usage of the platform;

(viii) Automated tools that are industry standard that can detect pornography content that might be posted and immediately remove the same;

(ix) Number of measurers in place to protect users from

misuse. These measures include:

a) Giving users the choice to make their account private so they can restrict content to approved followers only.

b) Giving users the choice to block other users.

c) Giving users the choice to filter comments by keywords (Hindu, English)

d) Blocking a number of potentially problematic terms from search and discovery.

e) Disabling the ability to receive private messages from other users.

f) Making an individual video post private.

g) Shutting down the React / Duet functions by video (the React/Duet functions are in-app features that allow users to create new videos based on existing videos on TikTok).

h) Disabling the downloading of a video by another user.

i) Pop-up warnings for high-risk content.

(x) Specific measures to curb the use of the Platform by children, including an age limit that only permits teenagers and above to access the platform.

(xi) Password protected Parental controls and restricted mode to enable parents and guardians to exercise supervision over the use of the app.

(xii) Advance Privacy features allow users to, inter alia

a) control who they interact with on TikTok;

b) decide the visibility of their specific videos before and after posting of those videos; and

c) Control/disable comments that can be made on their videos, both before as well as after uploading of videos.

The Platform's Community Guidelines are annexed herewith and marked as ANNEXURE R-4 (PAGE Nos. ___to___ of typed set of R6), Privacy policy is annexed herewith and marked as ANNEXURE R-5 [Page Nos. ___to___ of typed set of R6] and

The General Terms for all users of the said app are annexed herewith and marked as ANNEXURE R-6 [Page Nos.____to____of typed set of R6].

37.It is submitted that the Respondent Company, since the launch of the app in India, regularly upgrades its safety features, even before the said petition to include a stricter mechanism in place to provide a more secure user experience for all its existing users as well as new users. The same further substantiates the Respondent Company's commitment towards protecting its users. A schedule of when TikTok deployed and enable a new safety feature in the recent past has been detailed below:

SAFETY FEATURE	VERSION	DATE ENACTED
In app reporting features	Upgrade (optimized) on Version 10.4.0	March, 2019
"Who can View Videos I liked"	Version 9.9.0	January, 2019
"Private Account"	Upgrade (optimized) on Version 10.7.0	March, 2019
Entire layout of the settings and categorization	Upgrade (optimized) on Version 10.7.0	March, 2019
Filtering Comments by keywords	Version 10.10.0	February, 2019
Three comments control	----	March, 2019
Screen Time Management and Restricted Mode further enhancing Parental Control mechanisms	Version 10.2.0	February, 2019

38.That it is reiterated that TikTok treats its obligations towards its users with utmost diligence and sincerity and aims to foster a safer community for its users. To elucidate the same attitude, TikTok's April 2019 safety presentation is annexed herewith and marked as Annexure R-7 [Page Nos. .____to____ of typed set of R6].

39.It is reiterated that the Respondent Company undertakes extensive due diligence in accordance with the requirements of the Information Technology Act, 2000 and the Rules thereunder, thereby ensuring the safety and Security of all its users. Accordingly, the Respondent Company has implemented robust take down mechanism for

content that does not align with the General Terms, Community Guidelines and Privacy Policy or the Platform/TikTok. Furthermore, the content on the Platform is monitored by advanced artificial intelligence enabled mechanism and by human intervention, which ensures a level of content moderation which is unmatched in the industry.

40. Thus the Respondent company has proactive take-down mechanisms including as artificial intelligence powered algorithms that detect illegal content, including such content that is violative of any law, such as Section 354C of the Indian Penal Code, 1860 and Section 66E of the IT Act, 2000, and remove/disable them instantly. This pioneering technology, which required millions of dollars of research & development and is constantly improved to enable better and better content review and moderation. Accordingly, the Respondent Company takes extreme and caution that only such content is shared and displaced, which is lawful, educational and primarily humorous in nature, without attracting the prohibition of any legal provisions or violating the right to privacy of any user."

10. In the reply, the 9th respondent focussed Article 19(1)(a) of Constitution of India and relied upon several judgments of Honourable Supreme Court. This Court find that the situation here is slightly different and the rights of intermediary, the creator of a platform for users for commercial purpose may not take shelter under Article 19(1)(a) of Constitution of India. However, this Court need not go into all these issues for the present.

11. Learned Senior Counsel appearing for the 9th respondent submitted that the irreparable harm by way of loss of jobs and financial investments and reputation suffered by the company should be considered for vacating the interim order. The 9th respondent in that reply relied upon the order of Honourable Supreme Court, while hearing SLP(C)No.9185 of 2019, on 22.04.2019 and pointed out that in case this Court fails to decide on the relief sought by TikTok on 24.04.2019, the ban order, dated 03.04.2019 stands vacated. As a matter of fact and record, the reply affidavit has been filed and served only on 24.04.2019 and no petition to vacate interim order or counter is filed by the respondent Nos.6 or 9 any time before. When this Court asked the learned Senior Counsel appearing for the respondents 6 and 9 that they owe an explanation as this Court presumed that the order of Honourable Supreme Court should have been passed only due to misrepresentation made by the respondents 6 and 9 or the Honourable Supreme Court would not have been briefed about the correct status of the case before this Court with regard to the fact that not even a counter affidavit or any other materials were placed before this Court by the respondents 6 and 9 on the previous hearing date, the learned Senior Counsel tendered his apology. The learned Counsel appearing for the petitioner and many, who wanted to come on record sought time to go through the reply and the huge

paper book for them to respond. Learned Senior Counsel Mr.Aravid P.Datar and the learned Standing Counsel appearing for the respondents 7 and 8 informed the Court that Nodal Officer has been designated to exercise statutory functions to strictly enforce and to activate the machinery provided under the Informations and Technology Act, 2000 and the rules above referred to.

12. This Court is concerned about several incidents of women and children using cyber space becoming victims reported in newspapers and social media. This Court is also aware of the fact that the millions of users are denied their right to have access to the said platform which also promises several good things. Though it is admitted that this possible mischief and irreparable damage that may be caused to innocent children and women cannot be ruled out, taking note of the safety features projected by the 9th respondent and the statutory protection and remedies available under the Statute, the interim order granted by this Court on 03.04.2019 is vacated.

13. As stated already, this Court's endeavour is to safeguard the people using cyber space becoming victims, especially woman and children. Any technological innovation should be utilised for constructive activities and not be used for commission of offences violating rights of the people. The reply affidavits filed by the 6th respondent and the company are treated as an undertaking that negative and inappropriate or obscene materials would be filtered and if any violation is found later, this Court would seriously view it as contempt of Court.

14. Post the matter in the second week of June, 2019.

sd/-
24/04/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

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MAHANAGAR DOOR SANCHAR BHAWAN,
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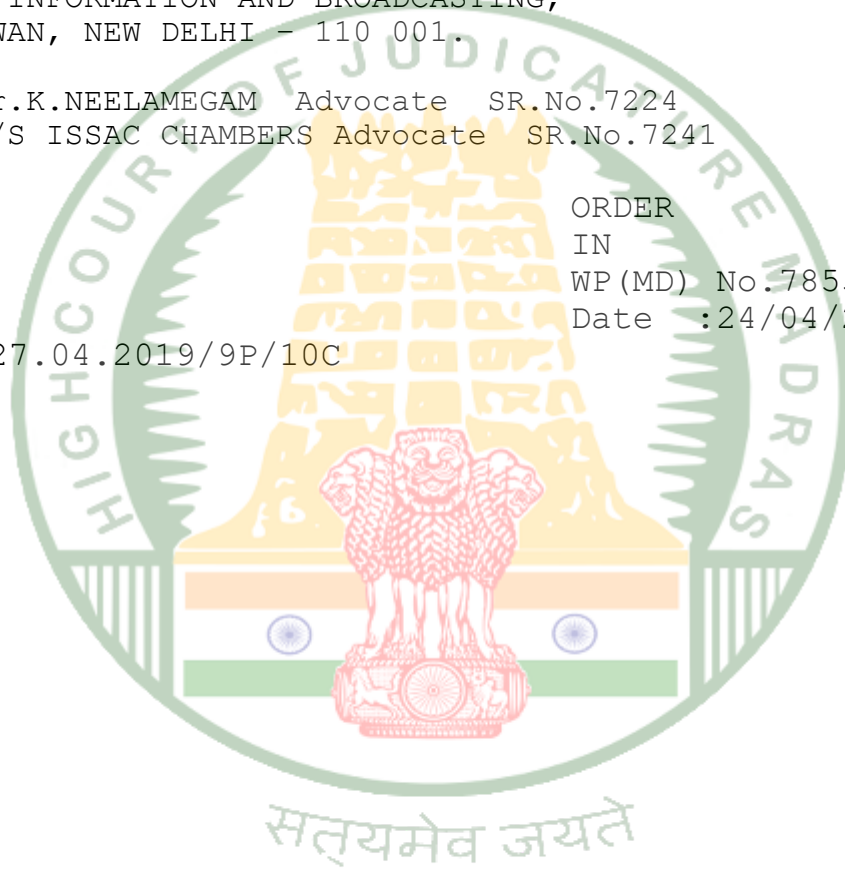
7.THE SECRETARY,
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SHASTRI BHAWAN, NEW DELHI - 110 001.

+1. C.C. to Mr.K.NEELAMEGAM Advocate SR.No.7224

+1. C.C. to M/S ISSAC CHAMBERS Advocate SR.No.7241

ORDER
IN
WP(MD) No.7855 of 2019
Date :24/04/2019

TK/PN/SAR-4/27.04.2019/9P/10C



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