

SYNOPSIS (April 2013)

MouthShut.com (India) Private Ltd & Anr. Petitioners

Versus

Union of India & Ors. Respondents

The present Writ Petition is being filed under Article 32 of the Constitution of India before this Hon'ble Court, *inter-alia* for quashing the Information Technology (Intermediaries Guidelines) Rules, 2011 (hereinafter the Intermediaries Rules, 2011) and declaring them violative of Articles 14, 19 and 21 of the Constitution of India. That on 11th April, 2011, the Information Technology (Intermediaries guidelines) Rules, 2011, were notified prescribing guidelines for intermediaries, in exercise of the powers conferred by clause (zg) of sub- section (2) of section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000). The Intermediaries Rules, 2011 are liable to be set aside as they exceed the bounds of delegated legislation, place unreasonable restrictions on the exercise of freedom of speech and expression and on the freedom to carry out an online business, as guaranteed by the Constitution of India. The Impugned Rules are also liable to be struck down because of their failure to conform to the statute under which they are made and for exceeding the limits of

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authority conferred by the enabling Act, the Information Technology Act, 2000 (hereinafter “The Act”). It is humbly submitted that the Intermediaries Rules, 2011 are liable to be struck down as they are so vague that it cannot be predicted with certainty as to what is prohibited and what is permitted. They delegate essential executive function to private parties forcing them to censor and restrict free speech and expression of citizens or be denied the “safe harbor” protection as guaranteed by the Information Technology Act, 2000. This leads to a “chilling effect” on free speech and introduction of “Backdoor Censorship”, ignoring the legislative intent that a robust safe harbor is not just beneficial but necessary for growth of internet and electronic commerce. Hence, the instant Writ Petition.

LIST OF DATES

09.06.2000 The Information Technology Act, 2000 was enacted to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternative to paper-based methods of communication and storage of information

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to facilitate electronic filing of documents with the Government agencies.

28.09.2000 That the Petitioner No.1, Mouthshut.com, a private limited company was incorporated under the relevant provisions of the Companies Act, 1956

Petitioner No.1, a social networking user review website and provide a truly democratic platform for consumers to express their opinions on goods and services, thereby facilitating the free flow of truthful information in the marketplace. It is estimated that at least 80 lakhs (eighty lakhs) users visit the website every month. The website acts as a meeting place for buyers to exchange ideas, opinions and feedback on products and services they have used or are considering buying.

Terms of Use policy of MouthShut.com states clearly that "Any opinions expressed by a member are those of a member alone, and are not to be attributed to MouthShut.com. MouthShut.com cannot and does not assume responsibility for the accuracy, completeness, safety, timeliness,

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legality or applicability of anything said or written by any member”.

Petitioner's official policy is to only remove content if ordered by a court of competent jurisdiction or on a written request signed by a competent authority of the Government in view of any “unlawful” content.

17.12.2004 In 2004, Avnish Bajaj, the CEO of Baazee.com, an auction portal, was arrested for an obscene MMS clip that was put up for sale on the site by a user. The Baazee case showed the legal risks that corporates operating an online business, that provide a platform for users to host their content, could be exposed to in spite of the fact that they are not the authors of the content. The Baazee.com case resulted in an appeal by the industry to amend the Information Technology Act, 2000 by providing protection to intermediaries from liabilities arising out of user-generated content.

27.10.2009 The Information Technology (Amendment) Act, 2008 came into force. The Act amended

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Section 79 of the IT Act, 2000 to provide for a safe – harbour protection to intermediaries. The Legislature intended to reduce legal uncertainty for Intermediaries and make the creator of the content responsible for it and not the host of the content as it would be both unjust and impractical to hold companies responsible for words someone else posted or videos, a third party created.

Respondent No.2 released a set of draft rules called the Information Technology (Due diligence observed by intermediaries guidelines) Rules, 2011 (Hereinafter the “draft rules”) and invited comments on these rules. However these rules were finalised without taking into account feedback submitted by many organisations and individuals. Information Technology (Intermediaries guidelines) Rules, 2011 were notified by the Government.

11.04.2011 Respondent No.1 on 11.04.2011 notified the Information Technology (Intermediaries guidelines) Rules, 2011, prescribing guidelines for intermediaries, in exercise of

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the powers conferred by clause (zg) of subsection (2) of section 87 read with subsection (2) of section 79 of the Information Technology Act, 2000 (21 of 2000).

That after the notification of the impugned Rules, the Petitioner No.1 website has received requests for removing content from persons and organisations from various parts of the country. Private parties have started writing to the Petitioner to remove genuine reviews in case they bring to light certain negative aspects of a product or service, often categorizing them as defamatory or harassing. Further, on a refusal to comply with such requests, the Petitioner is flooded with legal notices to the Petitioner to remove any negative reviews or else face defamation charges claiming damages to the tune of Rs. 2000 (Rupees two thousand) crores and criminal proceedings.

Expressing inability to take such an action in absence of a written request signed by the relevant authority or a court order, the Petitioner No.1 has so far refused to comply

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with such requests and threats. However, the threats have continued and the police officers have threatened to arrest the Petitioner No.2 under Section 66A of the Information Technology Act, 2000.

That as per the impugned rules, Petitioner No.1 is required to take an action within thirty six (36) hours of receiving a request by an aggrieved person. However, Petitioner No.1 is incapable of making legal determinations.

It is submitted that impugned rules result in an illegal censorship of the Internet by intermediaries at the instance of any affected person who can force an intermediary to take action by merely sending across an email stating her grievance.

.04.2013 That the impugned rules in the garb of regulating intermediaries impose unreasonable restriction on the freedom of expression of the users of these websites and such restrictions make it unviable to operate the websites.

11.04.2013 Hence the present Writ Petition.