

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 7TH DAY OF AUGUST, 2019

PRESENT:

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO.6050 OF 2019 (C) PIL

BETWEEN:

MR. PADMANABH SHANKAR,
S/O. MANNIL PADMANABHAN NAIR,
AGED ABOUT 82 YEARS,
#1009, 13TH MAIN,
2ND CROSS, HAL II STAGE,
BANGALORE-560 008.

... PETITIONER

(BY SRI. AJESH KUMAR S, ADVOCATE)

AND:

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF INFORMATION & BROADCASTING
A-WING, SHASTRI BHAWAN,
DR. RAJENDER PRASAD ROAD,
NEW DELHI-110 001.
2. GOVERNMENT OF KARNATAKA,
DEPARTMENT OF INFORMATION TECHNOLOGY,
M.S. BUILDING, 6TH FLOOR, 5TH STAGE,
BENGALURU-560 001,
BY CHIEF SECRETARY.
3. NETFLIX ENTERTAINMENT SERVICES INDIA (LLP)
KALAVAKKAM PROPERTIES PRIVATE LIMITED,
HAVING REGISTERED OFFICE AT:
UNIT NO.306-A, 'THE CAPITAL',
3RD FLOOR, PLOT C-70, G BLOCK,
BANDRA KURLA COMPLEX,

BANDRA (EAST),
MUMBAI-400 051,
REPRESENTED HEREIN BY ITS
DIRECTOR, MR. UPADHYAY MANOJ TRYAMBAKLAL.

4. YOUTUBE, GOOGLE INDIA PVT. LTD.,
NO.3, RMZ INFINITY-TOWER E,
FLOOR-3, 4 AND 5
OLD MADRAS ROAD,
BENGALURU-560 016.
REPRESENTED HEREIN BY ITS,
DIRECTOR, MR.SATYA RAGHAVAN.
5. HOTSTAR, STAR INDIA PVT. LTD.,
HOUSE URMI ESTATE,
95 GANPATRAO KADAM MARG,
LOWER PAREL,
MUMBAI-400 004,
REPRESENTED HEREIN BY ITS
CEO, MR. AJIT MOHAN.
6. AMAZON PRIME, AMAZON DEVELOPMENT
CENTRE (INDIA) PVT. LTD.,
WORLD TRADE CENTRE,
BRIGADE GATEWAY CAMPUS,
DR. RAJKUMAR RD,
MALLESWARAM WEST,
BENGALURU-560 055,
REPRESENTED HEREIN BY ITS
DIRECTOR, MR. GAURAV GANDHI.
7. ALT DIGITAL MEDIA ENTERTAINMENT LIMITED,
C-13, BALAJI HOUSE,
DALIA INDUSTRIAL ESTATE,
OPP. LAXMI INDUSTRIAL ESTATE,
NEW LINK ROAD, ANDHERI WEST,
MUMBAI-400 053.
REPRESENTED HEREIN BY ITS
CEO, NACHIKET PANTVAIDYA.RESPONDENTS

(BY SRI. S.K.ACHARYA, ADVOCATE FOR R1;
SRI. VIJAY KUMAR A PATIL, AGA FOR R2;
SRI. ADITYA SONDHI, SENIOR COUNSEL FOR
SRI. JAIDEEP REDDY K., ADVOCATE FOR R3;
*SHRI SIDDARTH P. DESAI, ADV., FOR R4;
SRI. ASHOK HARNALLI, SENIOR COUNSEL FOR

SMT. POONAM PATIL, ADVOCATE FOR R5;
SRI. SAIKRISHNA RAJAGOPAL, ADVOCATE FOR R6;
SRI. NAGANAND, SENIOR COUNSEL FOR SRI. VIKRAM
UNNI RAJAGOPAL, ADVOCATE FOR R7.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DECLARE THAT THE TRANSMISSION OR BROADCAST OF ANY FILMS, CINEMA, SERIALS AND OTHER MULTIMEDIA CONTENT THROUGH THE INTERNET SHALL COME WITHIN THE DEFINITION OF SECTION 2(C) OF THE CINEMATOGRAPH ACT, 1952. ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

Yesterday, we have heard the submissions canvassed by the learned counsel appearing for the parties.

2. The issue which arises in this petition under Article 226 of the Constitution of India is whether the transmission or broadcast of any films, cinemas or serials and other multimedia content through the internet will come within the definition of 'cinematograph' under Clause (c) of Section 2 of the Cinematograph Act, 1952 (for short 'the said Act of 1952')?

3. We must note here that the learned counsel appearing for the petitioner has confined the challenge in this petition to the first two prayers which read as under:

- “(i) Issue an appropriate Writ, Direction or Order to declare that the transmission or broadcast of any films, cinema, serials and other multimedia content through the internet shall come within the definition of Section 2(c) of the Cinematograph Act, 1952.*
- “(ii) Issue an appropriate Writ, Direction or Order to declare that waiching films, cinema, serials and other multimedia content through internet within the four walls of a house or office would amount to public exhibition under the Cinematograph Act, 1952.”*

4. The learned counsel appearing for the petitioner has taken us through the provisions of the said Act of 1952 and submitted that the definition of ‘cinematograph’ in Clause (c) of Section 2 of the said Act of 1952 includes any apparatus for the representation of moving pictures or series of pictures. His submission based on various decisions is that a transmission or broadcast of films/serials through internet will be governed by the definition of ‘cinematograph’. Considering the fact that the definition in Clause (c) is an inclusive definition, it would include all modern gadgets which are used for exhibiting films

and serials. His submission is that exhibition of films by use of cable television network or video cassette have been brought within the purview of Clause (c) of Section 2 of the said Act of 1952. He invited our attention to the consequences of the applicability of the said Act of 1952 to such cinema or serials. He submitted that the certification as contemplated by Section 4 of the said Act of 1952 will be required for exhibition of films and serials through internet. He invited our attention to the averments made in the petition in support of his case that regulation of films and serials for exhibition through internet is absolutely necessary. He pointed out that third to seventh respondents broadcast films or serials which have an objectionable content. He pointed out that the fourth respondent has been added as it is a well known intermediary.

5. He invited our attention to the decision of the Apex Court in the case of **RANJIT D.UDESHI vs. STATE OF MAHARASHTRA**¹ and in particular, what is held in paragraph 9 onwards in the said decision. He also invited our attention to the decision of the Apex Court in the case of **K.A.ABBAS vs. THE UNION OF INDIA [UOI] AND ORS**² which refers to the

¹ AIR 1965 SC 881

² (1970)2 SCC 780

principles laid down in the case of **RANJIT D.UDESHI** (*supra*). He also invited our attention to the observations made in paragraphs 51 to 53 of the said decision. He invited our attention to the decision of the Apex Court in the case of **S.RANGARAJAN AND ORS. vs. P.JAGJEVAN RAM AND ORS.**³. Inviting our attention to another decision of the Apex Court in the case of **SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, GOVT. OF INDIA AND ORS. vs. CRICKET ASSOCIATION OF BENGAL AND ORS.**⁴, he pointed out the relevant observations made in the decision. Reliance is also placed on the decision of the Division Bench of the High Court of Bombay in the case of **PRATIBHA NAITTHANI vs. UNION OF INDIA [UOI] AND ORS.**⁵. Reliance is also placed on the observations made by the learned Single Judge of the Delhi High Court in paragraphs 44 and 45 of the unreported decision in the case of **SUPER CASSETTES INDUSTRIES LTD. AND ORS. Vs. BOARD OF FILM CERTIFICATION AND ORS.**⁶. He pointed out that if there are individuals or families watching a film in the confines

³ (1989)2 SCC 574

⁴ (1995)2 SCC 161

⁵ AIR 2006 BOM 259

⁶ W.P.(C) No.2543/2008 and other connected matters

of their homes, such viewers would still do it as members of the public and it would be an 'exhibition' of such film. He also pointed out that it was further held by the Delhi High Court that at the point where members of the public, to whom the films are made available both on DVD or VCD play it on an equipment and view such film, whether in the confines of a private space or otherwise, prior certification thereof will be required. Therefore, in short, his submission is that consistent with the law laid down by the Apex Court and various High Courts, it must be held that broadcasting or transmission of the films or serials through internet will attract the provision of the said Act of 1952.

6. The definition of 'cinematograph' in Clause (c) of Section 2 of the said Act of 1952 includes regulation of films and serials by use of internet and therefore, the other provisions of the said Act of 1952 in particular, regarding certification are applicable to the films and serials transmitted through internet. Our attention was invited to a decision of the Delhi High Court in the case of **SHRI BALWINDER SINGH vs.**

DELHI ADMINISTRATION & OTHERS⁷ with regard to the interpretation of Section 10 of the said Act of 1952.

7. The learned Senior Counsel representing various respondents have opposed the petition. They have pointed out that some of the respondents have their own corrective mechanism in the form of Code for Self-Regulation of Online Curated Content Providers. Reliance is placed on the decision of the Apex Court in the case of **SHARAT BABU DIGUMARTI vs. GOVERNMENT [NCT OF DELHI]**⁸. Their submission is that the provisions of the Information Technology Act, 2000 (for short 'the IT Act') take care of the apprehensions expressed by the petitioner in the writ petition which is in the nature of public interest litigation. Another submission based on the said decision is that the provisions of the IT Act override the provisions of the Indian Penal Code.

8. We have carefully considered the submissions and perused the averments made in the petition. We have noted the apprehensions expressed by the petitioner, who is a senior citizen, about the adverse impact/effect of unrestricted

⁷ ILR (1984)II DELHI 845

⁸ (2017)2 SCC 18

broadcasting of films, cinema, serials etc. through internet on the minds of children. The concern of the petitioner is that there is no mechanism to regulate the unrestricted broadcasting of objectionable films, cinema, serials etc., through the internet. Though self-regulation is adopted by some of the respondents, there is no mechanism which regulates unrestricted broadcasting of objectionable films, cinema, serials etc. The effect of availability of such objectionable material on the internet should be a matter of a grave concern for the State and it cannot be disputed that the State will have to find out a solution within the frame work of the existing laws or if necessary, by making a law.

9. However, in this petition, we are called upon to decide the legal issue of applicability of the provisions of the said Act of 1952 to films, cinema, serials etc, which are transmitted or broadcasted through the internet. We have carefully perused the said Act of 1952. Part II of the said Act of 1952 deals with certification of films and the principles for guidance in certifying films. All these provisions deal with public exhibition of films within the meaning of Clause (dd) of Section 2 of the said Act of 1952. For the purpose of this

petition, Clause (c) and Clause (dd) of Section 2 of the said Act of 1952 are relevant which read thus:

“(c) “Cinematograph” includes any apparatus for the representation of moving pictures or series of pictures;

(dd) “film” means a cinematograph film;”

The said Act of 1952, therefore, applies to films within the meaning of Clause (dd) of Section 2 of the said Act of 1952 which have to be necessarily cinematograph films. The concept of what is a cinematograph is in Clause (c) of Section 2 of the said Act of 1952 which we have quoted above. The cinematograph is an equipment which includes a camera which creates a film and the machine which exhibits or displays a film. A video is recording of moving images and their recording is made digitally or in the form of digital files. Therefore, as held by some of the High Courts, a video film or a video compact disc is included in Clause (c) of Section 2 of the said Act of 1952.

10. In this petition, we are dealing with what is available on the internet. Broadly speaking, internet can be said to be an interconnected network which connects the

computers across the globe. It can be said to be an interconnected network of all the web-servers worldwide. When we come to web-server, it is essentially a program that uses Hyper Text Transfer of Protocol [http] to serve the files that form web pages to the users which are provided in response to their requests which are forwarded by http client on their computers. There may be various films or serials transmitted via internet. If we take into consideration the concept of internet and how the internet operates, it is impossible to accept the submission that the films or serials which are transmitted or exhibited through internet will constitute films within the meaning of Clause (dd) of Section 2 of the said Act of 1952. In fact, if we consider the concept of internet, it is very difficult to accept the contention that through the internet there is an exhibition of films or serials. The internet contemplates transfer of files in response to the requests made by the users.

11. Some of the respondents pointed out that in the writ petition itself, there are averments to indicate that the petitioner is accepting that the provisions of the said Act of

1952 are not applicable to films/serials on internet. Reliance is placed on the contentions raised in the affidavit filed by the Union of India that the said Act of 1952 may not be applicable to such films or serials. However, that is not relevant as the submission made that the provisions of the said Act of 1952 are applicable to serials/films on internet will have to be decided by interpreting the law.

12. Now, coming to the first prayer, for the reasons which we have recorded above, it is not possible to accept the submission that the transmission or broadcasting of any films, cinemas, serials etc., through the internet will come within the purview of Clause (c) of Section 2 of the said Act of 1952 and consequently, such films, cinemas or serials will come within the meaning of Clause (dd) of Section 2 of the said Act of 1952. Therefore, the direction as prayed in the first prayer cannot be granted.

The second prayer is virtually a consequential prayer which could be granted only if the first prayer could be granted. Therefore, we are unable to grant both the prayers which are pressed by the learned counsel appearing for the petitioner.

13. As pointed out by some of the respondents, the provisions of the IT Act may take care of the objectionable activity for which the petitioner has objected to. As only the first two prayers are pressed into service, it is not necessary for us to go into the other aspects. As far as the guidelines placed on the Code for Self-Regulation of Online Curated Content Providers are concerned, we must note that the same do not create any enforceable right in favour of citizens and therefore, the same do not prevent the State from considering what safeguards and what regulations within the four corners of law can be provided as regards the grievance made by the petitioner.

14. In the circumstances, though we are not inclined to grant the reliefs as prayed for, we are of the view that the concern expressed by the petitioner merits a serious consideration by the first and second respondents. Therefore, notwithstanding the disposal of the petition, it is always open for the petitioner to make an appropriate representation to the said respondents. We are sure that considering the larger public interests, both the first and second respondents will

examine the issue and find solutions within the four corners of law.

Subject to what is observed above, we decline to entertain the petition. Accordingly, the petition is disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Ksm*