

ITEM NO.1

COURT NO.4

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.341/2008

SABU MATHEW GEORGE

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln. (s) for permission to file additional documents)

Date : 19/09/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. Sanjay Parikh, Adv.
Ms. Manjula Gupta, AOR

For Respondent(s) Mr. Ranjit Kumar, S.G.
Ms. Binu Tamta, Adv.
Mr. Ajay Sharma, Adv.
Ms. Gunwant Dara, Adv.
Mr. Arvind Kumar Sharma, AOR
Mr. R.R. Rajesh, Adv.
Mr. D. S. Mahra, AOR

For R-3 Mr. C.A. Sundaram, Sr. Adv.
Mr. Shashank Manish, Adv.
Mr. Praveen Sehrawat, Adv.
Ms. Priyadarshi Banarjee, Adv.
Mr. Sarans Jain, Adv.
Mr. E. C. Agrawala, AOR

For R-5 Mr. K.V. Vishwanathan, Sr. Adv.
Ms. Saanjh N. Purohit, Adv.
Mr. Tanuj Bhushan, Adv.
Mr. S. S. Shroff, AOR

For R-4 Mr. Anupam Lal Das, AOR
Mr. Anirudh Singh, Adv.
Mr. Sahil Monga, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In pursuance of our orders dated 5th July, 2016, and 25th July, 2016, an affidavit has been filed by the competent authority of the Ministry of Electronics & Information Technology, Government of India. It is submitted by Mr. Ranjit Kumar, learned Solicitor General of India that there was a meeting with the three software companies, namely, Google India, Yahoo ! India and Microsoft Corporation (I) Pvt. Ltd. and, prior to the meeting, the companies were asked to respond to the following questions:-

- "(a) Whether respondents feel obligated to comply with the provisions of PC-PNDT Act, especially section 22 of the Act as directed by this Hon'ble Court vide its order dated 28.01.2015?
- (b) Whether Respondents are ready to publish a "Warning Message" on top of search result, as and when any user in India submits any "key word searches" in search engines, which relates to pre conception and pre natal deermination of sex or sex selection?
- (c) Whether Respondents are ready to block "auto-complete" failure for "key word" searches which relates to pre-conception and/or pre-natal determination of sex or sex selection?
- (d) Whether the words/phrases relating to pre-conception and pre natal determination of sex or sex selection to be provided and regularly updated by the Government for the 'key word search' or shall it be the onus of the Respondents providing search engine facilities?
- (e) Whether it is feasible for the Respondents to place this Hon'ble Court order dated 28.01.2015 on their respective Home Page(s), instead of placing them on Terms of Service (TOS) pages?

- (f) What is the suggested timeline to incorporate "Warning Message", blocking of the "auto-complete" feature for key word search & related terms etc. relating to pre-conception and pre-natal determination of sex or sex selection?
- (g) Any other information as Respondents would like to share?"

The respondents-Companies have submitted their replies to the Union of India, which have been brought by way of a chart as Annexure M1/4 to the affidavit filed by the said Ministry. We have already reproduced the questions posed by the Union of India. As we find from the chart, all the respondents have agreed to follow the law of this country and not to allow any advertisement or publish any content on their respective search engines.

Mr. Ranjit Kumar, learned Solicitor General has pointed out to the responses to the questions (a) to (g) in *seriatim* as submitted by the three Companies. We think it appropriate to reproduce the responses. They read thus:-

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| Google India Pvt. Ltd. | Microsoft Corporation India Pvt. Ltd. | Yahoo India Pvt Ltd. |
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| <p>Yes</p> <p>(i) Stated to have taken all possible steps to ensure compliance with PC-PNDT Act. (Ref : Communication dated 19th July, 2016, Page No.43)</p> <p>ii) Further submitted that the</p> | <p>Yes</p> <p>i) Informed their absolute compliance with the mandate of Section 22 of PC & PNDT Act being the prohibition of advertisement in relation to conception and pre natal determination of</p> | <p>Yes.</p> <p>(i) Stated that their advertising policy prohibits advertising that promotes pre-conception/ prenatal sex selection techniques (Ref: Communication dated 29th July, 2016 page 78 no. reply.1</p> |

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| <p>intent behind sec.22 of the PCPNDT Act is to expressly prohibit an advertisement that is a commercial communication and does not extend to other forms of content including "search results, videos, blogs or images"</p> <p>(Ref : Communication dated 1st August, 2016, Page no.40, para no.5.</p> | <p>sex or sex selection.</p> <p>(Ref.) Communication dated 1st Aug. 2016, page no.63, para 2)</p> <p>ii) Submitted that the prohibition does not, however extend to any content outside of advertisements such as algorithmic search content images, the auto-complete function and the related search function that are algorithmically/ organically populated.</p> | |
| <p>Yes.</p> <p>Agrees to publish Warning Message at the top of the "key word search" result web page.</p> <p>(ef : Communication dated 19th July, 2016, Page no.46, Pt.ii</p> | <p>Yes</p> <p>Agrees to issue a public service announcement on the search result pages</p> <p>(Ref : Communication dated 1st Aug., 2016, Page no.64 Para IV-4)</p> | <p>Yes</p> <p>Agrees to publish Warning Message.</p> <p>(Ref : Communication dated 29th July 2016, Page no.80 reply.vi)</p> |
| <p>Yes</p> <p>(i) Agrees to block certain terms that directly relate to pre-natal gender detection & selection from</p> | <p>Yes.</p> <p>(i) undertakes to restruct its auto-complete options and related searches options on Bing India for the key</p> | <p>Yes.</p> <p>Agrees for disabling of Auto complete feature in in.yahoo.com that directly relate to pre-natal gender detection & selection</p> |

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| <p>appearing as words provided auto-complete by/under MeitY's suggestions or as Affidavit dated related search 15.09.2015 in para terms on the local 4(a) - (u). (Ref : domain. Communication dated 1st Aug, 2016, Page no. 64, Para V-6)</p> <p>(ii) Further submits that this will remain an iterative process, which will require updating.</p> <p>(Ref : Communication dated 19th July 2016, Page no.46, Pt.i)</p> | | <p>(Ref : Communication dated 29th July, 2016, Page no.80 reply.vii)</p> |
| <p>(i) Has already blocked the "key word search terms" as provided by/under MeitY's Affidavit dated 15.09.2015.</p> <p>(ii) As there are vast numbers of permutation and combinations of blocked terms, it undertakes to review and expand this list.</p> <p>(Ref : Communication dated 19th July 2016, Page no.45, Pt.ii)</p> | <p>(i) Has agreed to block the "key word search terms" as provided by/under MeitY's Affidavit dated 15.09.2015 in para 4(a) - (u), however puts onus on the Government to provide additional key word search terms in future and reserves its right to review the same.</p> <p>(Ref : Communication dated 1st Aug, 2016, Page no.67, Para no.16</p> | <p>(i) Has agreed to block the list of keywords provided by the Supreme Court and the MeitY (as per the Annexure A) to disable the auto complete.</p> <p>(ii) Informed that they update this list of key words based on any reported violations of the Act that are brought to their attention in accordance with due process of law.</p> <p>(Ref : Communication dated 29th July 2016, Page no.80, Reply .V. iii)</p> |
| <p>No</p> <p>(i) Submits that</p> | <p>No</p> <p>(i) Submits that</p> | <p>No</p> <p>(i) Submits that the</p> |

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| <p>the said order has already been placed as part of relevant Terms of Service/Policy Page.</p> <p>(ii) Submits that it maintains a clear Home Page with links to only very specific information that is relevant to search engine services.</p> <p>(iii) Further submits that a Warning Message should be treated as sufficient to serve the objective or spreading awareness on the issue.</p> <p>(iv) Informed that placing a message on the homepage would provide information on this issue to users regardless of their interest in this topic</p> <p>(Ref : Communication dated 19th July, 2016, Page no.47, Pt. D-I)</p> | <p>the said order has already provided the link to the said order in its advertisement policy pages</p> <p>(Ref: Communication dated 20th July, 2016, Page no.71, Para no. 15-iii)</p> <p>(ii) Submits that displaying the order or featuring any link to the order on the 'Home Page' would interfere with the deliberate, highly thoughtout design and functional layout of the Bing "Home Page".</p> <p>(iii) Microsoft informed that if the said court order is put up on the home page or a link to the same is featured on the page, it should have the effect of creating unnecessary concern/uncertainty amongst the larger community of users.</p> <p>(Ref : Communication dated 20th July 2016, Page no.72, Para no.15 -vi)</p> | <p>said order has already been placed as part of relevant Terms of Service/Page.</p> <p>(ii) Submits that their home page has certain limitations, business objectives, business expectations, and space and design constraints. As a result, and for legitimate business reasons, they cannot display such notices or order on the home page.</p> <p>(Ref : Communication to MeitY vide email dated 19th July, 2016 from yahoo India Private Limited)</p> |
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| <p>Requested 5 weeks time.</p> <p>(Ref : Communication dated 19th July 2016, Page no.46, pt.ii)</p> | <p>On or before September 15, 2016</p> <p>(Ref : Communication dated 1st Aug 2016, Page no.64, Para IV.4)</p> | <p>By September 15, 2016</p> <p>(Ref : Communication dated 29th July 2016, 2016, Page no.80, reply.vii)</p> |
| | <p>Microsoft undertakes to limiting the visibility of suggestions on its auto-complete platform and related searches platform, against the queries/ key words indicated in the Government's Affidavit, by 31.12.2016 for the users located in India. Microsoft also confirms that by 15.09.2016, it will share an update with the MeitY on the progress made in this regard.</p> | <p>Yahoo India stated that they are responsible for managing and operating "in.yahoo.com". Yahoo India has advertising policies that impose requirements for advertisements to appear on in.yahoo.com.</p> <p>Yahoo India informed that Yahoo.com (which is subject to US laws) is a website managed by Yahoo! Inc., a separate legal entity incorporated in State of Delaware; U.S.A. Yahoo India is not authorized to make any statement on behalf of Yahoo! Inc. Yahoo India does not have responsibility over the operations of Yahoo Inc., given they are managed by different legal entity.</p> <p>(Ref : Communication dated 29th July 2016, 2016 Page no. , reply.ii)</p> |

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| | | <p>Further, Yahoo India informed that Duckduckgo.com (DDG) is a U.S.-based, independent search provider. Yahoo India does not control and also does not have any contractual relationship with DDG. Therefore, we are not authorised to make any statements on behalf of DDG.</p> <p>(Ref : Communication dated 29th July, 2016, 2016, Page no.79, reply.iv)</p> |
| <p>Ref. Google India letter(s) dtd: 19th July, 2016 and 1st August, 2016 (annexed from Page No.38-62)</p> | <p>Ref. Microsoft India letter(s) dtd. 20th July 2016 and 1st Aug., 2016 (annexed from opage No.63 to 77)</p> | <p>Ref. Yahoo India communications dtd. 19th July 2016, 29th July 2016 (annexed from Page No.78 to 88)</p> |
| <p>Adwords-support@google.com</p> | <p>Will provide by 15.09.2016</p> | <p>in-legalpoc@yahoo-inc.com</p> |

Explaining the same, it is submitted by the learned Solicitor General that all the three Companies are bound to develop a technique so that, the moment any advertisement or search is introduced into the system, that will not be projected or seen by adopting the method of "auto block". To clarify, if any person tries to avail the corridors of these companies, this devise shall be adopted so that no one can enter/see the said advertisement or message or anything that is prohibited under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, 'the Act'), specifically under Section 22 of the said Act.

Mr. Sanjay Parikh, learned counsel for the petitioner would contend that the Union of India should have taken further steps to see that the law of the country is totally obeyed by these three Companies, inasmuch as the commitment given by them or the steps taken by the Union of India are not adequate. He has pointed out from the affidavit filed by the petitioner that there are agencies which are still publishing advertisements from which it can be deciphered about the gender of the foetus. Learned counsel would submit that Section 22 of the Act has to be read along with the other provisions of the Act and it should be conferred an expansive meaning and should not be narrowly construed as has been done by the respondents.

Mr. Ranjit Kumar, learned Solicitor General at this juncture would submit that he has been apprised today only about the "proposed list of words" in respect of which when commands are given, there will be "auto block" with a warning and nothing would be reflected in the internet, as it is prohibited in India. We think it appropriate to reproduce the said "proposed list of words". It reads as under:-

"Proposed List of Words

Gender selection
Gender selection Kits
Gender selection service
Gender selection clinics
Gender selection technique
Prenatal sex selection
Prenatal sex selection kits
Prenatal sex selection service
Prenatal sex selection clinics
Prenatal sex selection technique
Prenatal sex determination
Prenatal sex determination kits
Prenatal sex determination service
Prenatal sex determination clinics
prenatal sex determination technique
Baby gender selection
Baby gender selection kits

Baby gender selection service
Baby gender selection clinics
Baby gender selection technique
Prenatal diagnostic tests for selection of sex
before or after conception
Prenatal conception test
Prenatal diagnostic
Prenatal foetoscopy for sex selection
Prenatal ultrasonography for sex selection
Sex selection procedure
Sex selection technique
Sex selection test
Sex selection administration
Sex selection prescription
Sex selection services
Sex selection management
Sex selection process
Sex selection conduct
Prenatal image scanning for sex selection
Prenatal diagnostic procedure for sex selection
Sex determination using scanner
Sex determination using machines
Sex determination using equipment
Scientific sex determination and sex selection
Gender test
Early Gender Test"

At this juncture, Mr. C.A. Sundaram, Mr. K.V. Vishwanathan, learned senior counsel, Mr. Anupam Lal Das, learned counsel appearing for Google India, Microsoft Corporation (I) Pvt. Ltd. and Yahoo India, respectively, have submitted that apart from the aforesaid words, if anyone, taking recourse to any kind of ingenuity, feed certain words and something that is prohibited under the Act comes into existence, the "principle of auto block" shall be immediately applied and it shall not be shown. The learned counsel appearing for the search engines/intermediaries have submitted that they can only do this when it is brought to their notice. In our considered opinion, they are under obligation to see that the "doctrine of auto block" is applied within a reasonable period of time. It is difficult to accept the submission that once it is brought to their notice, they will do the needful. It need not be over

emphasized that it has to be an in-house procedure/method to be introduced by the Companies, and we do direct.

Regard being had to the submissions advanced at the Bar, especially the objections raised by Mr. Parikh with regard to the expansive interpretation to be placed under Section 22 of the Act, let the matter be listed for final disposal on 16th November, 2016.

In the meantime, the competent authority of the Ministry of Health and Family Welfare, Government of India, shall file an affidavit.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master