

ITEM NO.18

COURT NO.5

SECTION PIL

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 of 2008

SABU MATHEW GEORGE

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

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

Date : 12/05/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Mr. Sanjay Parikh, Adv.
Mr. Ritwik Parikh, Adv.
Mr. A.N. Singh, Adv.
Ms. Mamta Saxena, 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.
Ms. Sunita Sharma, Adv.
Mr. R.R. Rajesh, Adv.
Mr. D. S. Mahra, AOR

Mr. Shyam Divan, Sr. Adv.
Mr. Sumit Attri, Adv.
Mr. Vikram Pachnanda, Adv.
Mr. Pratyush Panjwani, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Praveen Sehrawat, Adv.
Mr. Sujoy Chatterjee, Adv.
Mr. E. C. Agrawala, AOR
Mr. Ayush Agrawal, Adv.

Mr. Anupam Lal Das, AOR
Mr. Anirudh Singh, Adv.

Mr. Arvind Kumar Sharma, AOR

Mr. Manu Nair, Adv.
Ms. Saajh N. Purohit, Adv.

M/s Suresh A. Shroff & Co.

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

On 28th January, 2015, having heard learned counsel for the parties, this Court had directed as follows:

"Heard Mr. Sanjay Parikh, learned counsel for the petitionr, Mr. Ranjit Kumar, learned Solicitor General of India, Mr. Shyam Divan, learned senior counsel for Respondent No.3, Mr. Anupam Das Gupta, learned counsel for Respondent No.4 and Mr. Vishwanathan, learned senior counsel for Respondent No.5.

All the affidavits are taken on record.

It is submitted by Mr. Ranjit Kumar, learned Solicitor General of India, relying on the additional affidavit filed by the Union of India, that it can stop the presentation of any kind of thing that relates to sex selection and eventual abortion, if the URL and the I.P. addresses are given along with other information by the respondents, regard being had to the key words, namely, "pre-natal diagnostic tests for selection of sex before or after conception, pre-natal conception test, pre-natal diagnostic, pre-natal foetoscopy for sex selection, pre-natal 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, pre-natal image scanning for sex selection, pre-natal

diagnostic procedure for sex selection, sex determination using scanner, sex determination using machines, sex determination using equipment, scientific sex determination and sex selection" It is his submission that such blocking/filtering on key-words advertisements links can be effectively or regularly done by the respondents as they have access to their respective mathematical algorithms all the time. In essence, either the respondents can block themselves or on certain details being provided the Union of India can block it.

Learned counsel for the respondents have referred to Section 22 of the PCPNDT Act 1994 and Section 69A of the Information Technology Act, 2000, apart from other provisions.

Mr. Sanjay Parikh, learned counsel appearing for the petitioners has submitted that throughout the world, the search engines have been directed to block certain service/giving of information which are not permissible to be shown in that country despite the issues of jurisdiction and technical problems being raised. He undertakes to file a convenience volume of judgments by the next date.

Having heard the learned counsel for the petitioner, as an interim measure, it is directed, the respondents, namely, Google, yahoo and Micro Soft shall not advertise or sponsor any advertisement which would violate Section 22 of the PCPNDT Act, 1994. If any advertise is there on any search engine, the same shall be withdrawn forthwith by the respondents.

At this juncture, Mr. Parikh, learned counsel appearing for the petitioner submitted that the order passed today shall be put on the policy page as also on the page containing 'terms and conditions of service' by respondent Nos. 4 to 6. The prayer is accepted and accordingly so directed.

The matters relating to total blocking of the items that have been suggested by the Union of India and providing the URL and IP addresses by Google, Yahoo and Micro Soft shall be taken up on 11.02.2015 when the matter shall be taken up for further hearing."

Thereafter, the matter was listed on certain occasions and when the writ petition was listed on 26th March, 2015, it was submitted by Mr. Sanjay Parikh, learned counsel appearing for the petitioners that the order passed on 28th January, 2015, is not followed by the respondent Nos.3, 4, and 5, namely, Google India, Yahoo India and Microsoft Corporation (I) Pvt. Ltd., inasmuch as such advertisements which are prohibited by virtue of the order are still being depicted. Be it noted, a compilation was filed by Mr. Sanjay Parikh in that regard.

Today, Mr. Sanjay Parikh has filed a compilation and apart from that he has also brought to our notice certain documents. One of the documents, as is submitted by Mr. Parikh, comes under the caption "Google shopping". The relevant part of which reads as follows:

"Conceive a Boy or a Girl - fakih-ivf.com
Ad. family-balancing.fakih-ivf.com/
Balance your family 100% accuracy Us experts
based in Dubai, UAE USA certifoed experts -
IVF treatment pioneers - Exceptional Success
Rates

Contact Us Book Appointment(En)
Locations Email Our Doctors

IVF Operations dubai - Salamatak.com
Ad. www.salamatak.com/IVF-ICSI
We Can Help You With Your Problem Get in
Touch for a Tailored Program

IVF Clinics in Dubai - DoctorUna.com
www.doctoruna.com/Dubai

Find an IVF Clinic in dubai & Book Your Appointment in Minutes!

UAE mother who opted for gender selection warns that.....
www.thenational.ae/.../uae-mother-who-opted-f
or-gender-selection-warn....."

Similarly, he has also drawn our attention to the caption "Yahoo and Microsoft", the relevant part of which are as follows:

"Advertising and Affiliates
DuckDuckGo generates revenue in two ways,
while upholding our privacy policy:

1. Advertising
2. Affiliate revenue

Advertising:

It is a myth that search engines need to track you to make money on Web search. When you type in a search, we can show an ad just based on that search term. For example, if you type in, "car" we show a car ad. That doesn't involve tracking because it is based on the keyword and not the person. We currently only show up to 2 ads, as opposed to the many you'll find on other search engines.

Advertising on DuckDuckGo takes the form of sponsored links that appear above search results. Sponsored links are currently syndicated through Yahoo!. They look like this:

How to advertise on DuckDuckGo:

The advertising we syndicate through Yahoo! is part of the Yahoo-Microsoft search alliance. By default, when you sign up for a Bing Ads account, your ads should automatically enter rotation into all of Bing's distribution channels including DuckDuckGo. If you'd like to double-check

that your ad is set up to run on DuckDuckGo.
perform the following:

1. When signed in to Bing Ads, click Campaigns.
2. Next, click on your campaign's name.
3. Then, click on your ad group's name.
4. Click the Settings tab.
5. Click Ad distribution.
6. Then, click Save at the bottom to finalize."

It is submitted by Mr. Sanjay Parikh that these are the advertisements and sponsorships and nothing else.

Resisting the aforesaid contentions propounded, it is submitted by Mr. Shyam Divan, learned senior counsel, Mr. Anupam Lal Das and Mr. Manu Nair, learned counsel appearing for the respondent Nos.3, 4 and 5 respectively, that the information in internet are in the electronic platform and they have a policy relating to advertisement and, in *praesenti*, no advertisement with regard to sex determination/sex selection takes place. It is their submission that when there is an electronic interface, all efforts are to be made by the respondents to see that there is no violation of any provisions of the Preconception and Pre-natal Diagnostics Techniques Act, 1994, and, especially the sex determination/sex selection and that is cavil in this case. Mr. Shyam Divan, learned senior counsel appearing for the Google India has submitted that if this page has an advertisement or sponsorship or shopping, they will act in conformity with the law and keeping in view the directions passed by this Court on 28th January, 2015. Needless to emphasize, if they are advertisements or sponsorships, Google India, Yahoo India and Microsoft Corporation (I) Pvt. Ltd., will do well to remove such things from their search engines within a week hence.

At this juncture, we must note a submission which has been canvassed by Mr. Anupam Lal Das, learned counsel appearing for Yahoo India, the respondent No.4 herein. It is contended by him that there is a "predictive test". Elaborating the same, it is urged by him that when there are one thousand commands "boy or girl/sex determination", search engine picks up, which is user generated and there is difficulty to stop it. We would like the competent authority of the Company to file an affidavit explaining the same as we are of the *prima facie* opinion that it violates the provisions of 1994 Act.

We have been apprised in course of hearing that there are some third party slip-ins in the area of advertisements and should the petitioner or his counsel intimate the respondent, it shall be immediately removed, if it runs contrary or counter to the provisions of the 1994 Act. Needless to say, this direction is subject to further submissions to be canvassed by learned counsel for the parties.

Mr. Sanjay Parikh, learned counsel appearing for the petitioners submitted that vide order dated 28th January, 2015, this Court had directed to reflect the said order on the "policy page" as also on the page containing "terms and conditions of service", but the "policy page" does not sub-serve the purpose and, therefore, it should be put on the "Home page". Learned counsel for the respondents pray for some time to file response to the same. Be it noted, Mr. Sanjay Parikh, learned counsel, has submitted with immense concern that when it is reflected in the "Home page", there is a real warning, but when it is mentioned in the "policy page", it does not really come within the public domain as is expected.

Mr. Ranjit Kumar, learned Solicitor General of India appearing for the Union of India, shall also apprise about the factum whether the reflection in the "Home page" is requisite to be incorporated in the order so that the respondent Nos.3 to 5 are bound by the laws of this country.

Let the matter be listed on 18th August, 2015.

Liberty is granted to Mr. Sanjay Parikh, learned counsel for the petitioner, to file additional affidavit with regard with the subsequent developments, if any.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master