

ITEM NO.23

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)

Date : 04/12/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Sanjay Parikh, Adv.
Mr. Ritwik Parikh, Adv.
Mr. A.N. Singh, Adv.
Ms. Manjula Gupta, AOR

For Respondent(s) Mr. Shyam Divan, Sr. Adv.
No.3 Mr. Sajan Poovayya, Sr. Adv.
Mr. Sumit Attri, Adv.
Mr. Praveen Sehrawat, Adv.
Mr. Pratyush Panjwani, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Ms. Priyadarshi Banerjee, Adv.
Mr. E. C. Agrawala, AOR

For R-4 Mr. Anupam Lal Das, AOR

For R-5 Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Anuj Berry, Adv.
Mr. Tanuj Bhushan, Adv.
for M/s Suresh A. Shroff & Co.

For R-2 Mr. Arvind Kumar Sharma, AOR

For R-1 Ms. Binu Tamta, Adv.
Ms. Gunwant Dar, Adv.
Mr. D. S. Mahra, AOR

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

It is submitted by Mr. Sanjay Parikh, learned counsel appearing for the petitioner that despite the legal prohibition, the respondents, namely, Google India, Yahoo India and Microsoft Corporation (I) Pvt. Ltd., are still getting things advertised in violation of the legal provisions contained in the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, as amended from time to time. Learned counsel would submit that the Department of Information Technology, Ministry of Communication and Information and the competent authority of Department of Health and Family Welfare are required to work harmoniously to see to it that the provisions of the 1994 Act are not violated, for that gravely affects the sex ratio in the country which has been seriously viewed by the legislature, as well as by this Court on the basis of legislation made by the Parliament.

Mr. Shyam Divan, learned senior counsel appearing for the respondent No3, Mr. Anupam Lal Das, learned counsel appearing for the respondent No.4 and Mr. K.V. Vishwanathan, learned senior counsel appearing for the respondent No.5, pray for some time to file their respective replies to the rejoinder affidavit filed by the petitioner.

Before we proceed to deal with the prayer for grant of time, we think it is obligatory to take note of one aspect. The Group Coordinator, Cyber Laws Formulation and Enforcement Division, Government of India, Department of Information Technology, had filed a counter affidavit on 16th August, 2010. We are compelled to reproduce a part of the said affidavit:

"3(e) While submitting this, it is further to submit that technological limitations pose a difficult task for providers of search engines to filter out/block the information violating the law. It is important to distinguish between two types of results that show up on a search engine.

(i) Organic Search results -

When a user enters a query in the search box a list of results that are most relevant to the users query are shown. In generating these results the search engine nearly indexes the information that is publicly available and accessible on the Internet in a purely automated manner. These search results are merely a list of third party independent website that are beyond the control and management of search engines themselves.

(ii) Sponsored links -

Sponsored links referred to the advertisements placed by advertisers after accepting the terms and conditions of use. These links advertise the goods and services offered by any

advertiser and upon clicking on the URL, take the user to the parent website of the advertiser where the user can find more information on the particular product or service that he/she is interested in.

(f) The service provider/search engines only provide the carriage, technology for indexing information. The content information is provided by others. Wherever the service provider is providing only the carriage and transmission mechanism and not the contents/information, it is necessary that the distinction needs to be made between a service provider and a content provider. The service provider can only be liable to the extent service provided by him. Wherever the service provider/search engines are providing both carriage as well as contents, it should be their absolute responsibility to filter out/block the violated information and sponsored links.

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(s) The pre-natal sex determination is an offence in India under PC & PNDT Act. However, it may not be an offence in other countries. The information published on the websites is generally aimed at for wider, world wide dissemination and caters to the needs to many countries and may not be for the Indian citizens. Also, most of these websites are hosted outside the country. Blocking of such sites advertising pre-natal sex determinaton may not be feasible due to their hosting

outside the country. Moreover, some of the websites provide good content for medical education and therefore blocking of such websites may not be desirable."

As we understand from the affidavit, it reflects a kind of helplessness by the said deponent. That apart, we do not appreciate the manner in which the stand has been expressed in paragraph (s) of the counter affidavit, that has been reproduced hereinabove.

Mr. Parikh, learned counsel for the petitioner, in his turn, has submitted that other countries have been able to control such advertisements, which violate the laws of their countries by way of entering into certain kind of agreement, developing technical tools and issuing appropriate directions.

In our considered opinion, an effort has to be made to see that nothing contrary to laws of this country are advertised or shown on these websites. However, for the said purpose, we would like to have the assistance from the competent authority from the Department of Information and Technology. We would request Mr. Ranjit Kumar, learned Solicitor General to assist us on the next date, being assisted by a competent officer, as it involves technical issues.

Learned counsel for the respondent Nos.3 to 5 have submitted that the websites do not violate the laws of India,

but as they provide a corridor, they do not have any control.
Be that as it may, a legal solution has to be arrived at.

List the matter on 15th December, 2014. As agreed to
by the learned counsel appearing for the parties, let the
matter be taken up at 2.00 p.m.

Liberty to file reply, as prayed for by learned
counsel appearing for the respondent Nos.3 to 5, within a
week hence.

Call on date fixed.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master