



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 9792 OF 2023

Kunal Kamra,
Indian inhabitant, aged 34 years, Residing
at C-33, Kataria Colony, Caddel Road,
Mahim,
Mumbai 400 016.

...Petitioner

~ versus ~

Union of India,
Represented by the Secretary, Ministry of
Electronics and Information Technology,
Having its office at Electronics Niketan, 6
CGO Complex, Pragati Vihar, Lodhi Road,
New Delhi 110 003.

...Respondent

WITH

WRIT PETITION (L) NO.14955 OF 2023

Editors Guild of India,
Having their registered office at B-62
Gulmohur Park (first floor),
New Delhi 100 049.

...Petitioner

~ versus ~

- 1. Union of India,**
Ministry of Electronics and Information
Technology, Having office at
Electronics Niketan, 6 CGO Complex,
Pragati Vihar, Lodhi Road,
New Delhi 110 003.

2. **Union of India,**
Ministry of Law and Justice, Having
office at 3rd floor, C Wing, Lok Nayak
Bhavan, Khan Market,
New Delhi 110 003.
3. **Union of India,**
Ministry of Information and
Broadcasting, Having office at Shastri
Bhavan, New Delhi 110 003.

...Respondents

WITH
INTERIM APPLICATION (L) NO.17704 OF 2023
IN
WRIT PETITION (L) NO.14955 OF 2023

1. **News Broadcasters & Digital
Association,**
Through its Secretary General,
Mrs Annie Joseph, Age – 67 years,
Registered Office at: FF-42, Omaxe
Sqaure, Commercial Centre, Jasola,
New Delhi 110 025.
2. **Bennett, Coleman & Company Limited,**
Through its Authorized Signatory
Mr Sanjay K Agarwal, Age – 54 years,
Having Office at Trade House, Ground
Floor, Kamala Mills Compound,
Senapati Bapat Marg, Lower Parel
West, Mumbai 400 013.
3. **M/s TV 18 Broadcast Limited,**
Through its Authorized Signatory
Mr Satyajit Sahoo, Age – 39 years,
Having Office at Empire Complex, 414,
Senapati Bapat Marg, Lower Parel
West, Mumbai 400 013.

...Applicants

In the matter between

Editors Guild of India,
Having their registered office at B-62
Gulmohur Park (first floor),

...Petitioner

New Delhi 100 049.

~ versus ~

1. **Union of India,**
Ministry of Electronics and Information
Technology, Having office at
Electronics Niketan, 6 CGO Complex,
Pragati Vihar, Lodhi Road,
New Delhi 110 003.
2. **Union of India,**
Ministry of Law and Justice, Having
office at 3rd floor, C Wing, Lok Nayak
Bhavan, Khan Market,
New Delhi 110 003.
3. **Union of India,**
Ministry of Information and
Broadcasting, Having office at Shastri
Bhavan, New Delhi 110 003.

...Respondents

WITH

(CIVIL APPELLATE JURISDICTION)

WRIT PETITION NO.7953 OF 2023

Association of India Magazines,
Registered office at E-3, Jhandewalan
Estate, New Delhi 110 055.
Through its President Srinivasan B, R/O
Gemini House, Old No.58, new No. 36, 3rd
Main Road, Gandhinagar, Adyar Chennai
600 020.

...Petitioner

~ versus ~

Union of India,
Through the Secretary Ministry of
Electronics and Information Technology,

Having office at Electronics Niketan, 6 CGO
Complex, Pragati Vihar, Lodhi Road,
New Delhi 110 003.

...Respondent

APPEARANCES

**For the Petitioner in
WPL/9792/2023.**

Mr Navroz Seervai, Senior Advocate,
*with Darius Khambata, Senior
Advocate, Arti Raghavan,
Vrinda Bhandari, Gayatri
Malhotra, Abhinav Sekhri &
Tanmay Singh, i/b Meenaz
Kakalia*

**For the Petitioner in
WP/7953/2023.**

**Mr Gautam Bhatia, with Aditi
Saxena.**

**For Applicant in
IAL/17704/2023.**

Mr Arvind Datar, Senior Advocate,
*with Nisha Bhambani, Rahul
Unnikrishnan & Bharat
Manghani, i/b Gautam Jain.*

For respondent-UOI.

Mr Tushar Mehta, Solicitor General,
*with Devang Vyas, Additional
Solicitor General, Rajat Nair,
Gaurang Bhushan, Aman
Mehta, DP Singh, A.M.Sethna,
Ankit Lohia, Savita Ganoo,
Sheelang Shah, Anusha Amin,
Vaibhavi Choudhary,
Devanshu Gupta in all
matters.*

**CORAM : A. S. Gadkari &
Dr. Neela Gokhale, JJ.**

DATE : 26th September 2024

FINAL JUDGMENT :-

- 1) The validity of an amendment of 6th April 2023 to Rule 3(1)
(b)(v) of the Information Technology (Intermediary Guidelines and

Digital Media Ethics Code) Rules, 2021 (“the amended IT Rule”) was the subject matter of challenge in this batch of writ petitions.

2) By Judgment and Order dated 31st January 2024, Justice G.S.Patel (as his Lordship then was) struck down the amended IT Rule as being ultra vires the provisions of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India, Section 79 of the Information Technology Act, 2000 (“the I.T. Act of 2000”) and also being in violation of the principles of natural justice.

3) One of us (Dr. Neela Gokhale, J.) upheld the validity of the amended Rule holding the same as not violative of Articles 14 and 19(1)(a) of the Constitution of India. The said amended I.T. Rule was neither ultra vires the provisions of the Act of 2000 nor was it contrary to the judgment of the Supreme Court in *Shreya Singhal vs. Union of India*.¹ It was held that the exemption under Section 79 of the I.T. Act of 2000 would cease to operate only if the offensive information as provided in the amendment to the Rules under challenge affected any restriction under Article 19(2) of the Constitution of India.

4) Thus, there was a difference of opinion between the Judges of the Division Bench namely, Justice G.S.Patel (as he then was) and one of us Dr. Justice Neela Gokhale. It was agreed that there was disagreement on every aspect of the matter. The point of

¹ 2015 INSC 257.

difference therefore was, whether the impugned Rule was ultra vires and unconstitutional.

5) In view of the difference of opinion with regard to the constitutionality of the amended Rule, the Division Bench directed the Registry to place the matter before the Hon'ble The Chief Justice of this Court for appropriate directions.

6) Pursuant to the above reference order, the Hon'ble The Chief Justice referred these proceedings for the opinion of a third Judge namely, Justice A.S.Chandurkar. He has rendered his opinion dated 20th September 2024 as under:

“N] **Conclusions:**

56] *Having considered the matter extensively on the points of difference, I would conclude by opining that I am in agreement with the view expressed by Patel J that -*

(a) Rule 3(1)(b)(v) of the Rules of 2021 as amended in 2023 is violative of the provisions of Article 14, Article 19(1)(a) and Article 19(1)(g) of the Constitution.

(b) The said Rule as amended is ultra vires the Act of 2000.

(c) The expression "knowingly and intentionally" does not apply to the amended portion of Rule 3(1)(b)(v) in relation to the business of the Central Government.

(d) The expression "fake or false or misleading" in absence of it being defined is vague and overbroad.

(e) The impugned Rule cannot be saved either by reading it down or on the basis of any concession made in that regard of limiting its operation.

(f) The test of proportionality as laid down in Gujarat Mazdoor Sabha (supra) is not satisfied by the impugned Rule.

(g) Given the totality of the above, the impugned Rule also results in a chilling effect qua an intermediary.

In my opinion therefore Rule 3(1)(b)(v) of the Rules of 2021 as amended in 2023 is liable to be struck down.

57] ~~XXXXXX~~

58] All the writ petitions be now placed before the Division Bench for being decided in accordance with the provisions of Chapter-I, Rule 7 of the BHCAS Rules and Clause 36 of the Letters Patent.”

7) Accordingly, pursuant to the opinion rendered by the 3rd learned Judge, the Petitions are placed before us, for pronouncement of the final judgment for disposing of the matters in accordance with the Rules.

8) Considering the opinion rendered by the 3rd learned Judge, Hon’ble Shri Justice A.S. Chandurkar and in view of the majority opinion, amendment dated 6th April 2023 to Rule 3(1)(b) (v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is declared unconstitutional and is struck down.

9) Petitions are accordingly allowed. There shall be no orders as to costs.

(Dr. Neela Gokhale, J)

(A. S. Gadkari, J)

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signed by
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