



2024:KER:90640

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 3<sup>RD</sup> DAY OF DECEMBER 2024 / 12TH AGRAHAYANA, 1946

WP(C) NO. 36896 OF 2022

PETITIONER:

ANEESH K. THANKACHAN  
AGED 37 YEARS  
S/O C. THANKACHAN,  
KOTTEKKATTU PANDINJATTETHIL VEEDU,  
VALAKAM P.O., KOTTARAKKARA,  
KOLLAM-691532.

BY ADVS.  
SRI GEORGE VARGHESE (PERUMPALLIKUTTIYIL)  
SRI MANU SRINATH  
SRI NIMESH THOMAS  
SRI SHERIN EDISON

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY SECRETARY TO THE MINISTRY OF  
ELECTRONICS & INFORMATION TECHNOLOGY,  
GOVERNMENT OF INDIA,  
ELECTRONICS NIKETAN,  
6 CENTRAL GOVERNMENT OFFICES COMPLEX,  
NEW DELHI - 110 003.
  
- 2 GROUP CO-ORDINATOR (CYBER LAW),  
DESIGNATED OFFICER UNDER THE E INFORMATION  
TECHNOLOGY (PROCEDURE AND SAFEGUARDS FOR BLOCKING  
FOR ACCESS OF INFORMATION BY PUBLIC) RULES, 2009,  
MINISTRY OF ELECTRONICS AND INFORMATION  
TECHNOLOGY, GOVERNMENT OF INDIA,  
ELECTRONICS NIKETAN,



2024:KER:90640

6 CENTRAL GOVERNMENT OFFICES COMPLEX, NEW  
DELHI - 110 003.

- 3 SECRETARY,  
DEPARTMENT OF INFORMATION AND TECHNOLOGY,  
MINISTRY OF ELECTRONICS AND INFORMATION  
TECHNOLOGY, GOVERNMENT OF INDIA, ELECTRONICS  
NIKETAN, 6 CENTRAL GOVERNMENT OFFICES COMPLEX,  
NEW DELHI - 110003.
- 4 STATE OF KERALA  
REPRESENTED BY PRINCIPAL SECRETARY, INFORMATION  
TECHNOLOGY DEPARTMENT,  
GOVT OF KERALA, SECRETARIAT,  
THIRUVANANTHAPURAM, KERALA- 695 001.
- 5 PRINCIPAL SECRETARY,  
INFORMATION TECHNOLOGY DEPARTMENT, THE NODAL  
OFFICER (UNDER RULE 4 OF THE INFORMATION  
TECHNOLOGY (PROCEDURE AND SAFEGUARDS FOR BLOCKING  
FOR ACCESS OF INFORMATION BY PUBLIC) RULES, 2009) ,  
GOVT. OF KERALA,  
SECRETARIAT,  
THIRUVANANTHAPURAM,  
KERALA -695 001.
- 6 YOUTUBE THROUGH GOOGLE INDIA PVT.LTD,  
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE,  
HAVING OFFICE AT UNITECH SIGNATURE TOWER-II, TOWER  
B, SECTOR-15,  
VILLAGE SILOKHERA,  
GURGAON, HARYANA - 122 001  
EMAIL:support-in@google.com (CORRECTED)  
  
ADDRESS OF R6 CORRECTED AS: GOOGLE LLC, 1600,  
AMPHITHEATRE PARKWAY, MOUNTAIN VIEW,  
CALIFORNIA-94043, UNITED STATES OF AMERICA.  
  
(ADDRESS OF R6 CORRECTED VIDE ORDER DATED 17-01-  
2023 IN IA NO.1/2022).
- 7 RESIDENT GRIEVANCE OFFICER FOR YOUTUBE  
GOOGLE LLC - INDIA LIAISON OFFICE, UNIT NO. 26,  
THE EXECUTIVE CENTER, LEVEL 8, DLF CENTRE,  
SANSAD MARG, CONNAUGHT PLACE, NEW DELHI - 110001.  
EMAIL:support-in@google.com



2024:KER:90640

8 ADDL.R8. SUNIL MATHEW  
OWNER AT I2I NEWS, ALTHARAKKAL BUILDING, O STREET,  
JAWAHAR NAGAR, THIRUVANANTHAPURAM, KERALA - 695003  
(IS IMPEADED VIDE ORDER DATED 1-07-2023 IN IA  
2/2023 IN WPC 36896/2023)

BY ADVS.

SRI GIRISH KUMAR V (CGC)

SRI RIJI RAJENDRAN

SRI SANTHOSH MATHEW (SR.) (K/1376/1995)

SRI ARUN THOMAS

MS.MITHA SUDHINDRAN

MS.BHAIRAVI S.N

SRI SOURADH C. VALSON

SRI SUNIL KUMAR KURIAKOSE, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY  
HEARD ON 05.06.2024, THE COURT ON 03.12.2024 DELIVERED  
THE FOLLOWING:



**T.R.RAVI.J**

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**W.P.(C)No.36896 of 2022**  
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**Dated this the 3<sup>rd</sup> day of December, 2024**

**JUDGMENT**

The writ petition was originally filed with the following prayers;

- "(i) issue a writ in the nature of mandamus or any other appropriate writ, direction or order directing Respondents 2 & 3 to issue necessary directions to Respondents 6 and 7 to remove the video uploaded in YouTube at URL:<https://www.youtube.com/watch?v=DyVdZAacpyM> at the earliest and to remove all videos hosting similar contents;
- (ii) issue a writ in the nature of mandamus or any other appropriate writ, direction or order, directing the 5<sup>th</sup> respondent to prosecute Ext.P2 Complaint as per the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009;
- (iii) issue a writ in the nature of mandamus or any other appropriate writ, direction or order directing Respondents 6 and 7 to decide and pass urgent orders on Ext.P1 Complaint and also to decide upon banning and removing all the contents hosted by YouTube channel named 'i2i News';



- (iv) The petitioner also prays that this Honourable Court may be pleased to dispense with the translation of the documents produced in the vernacular language;
- (v) issue such other writ, direction or order as deemed fit."

2. Later, by an amendment application, the petitioner has sought to grant the following prayers;

- (vi) Issue a writ of certiorari or any other appropriate writ setting aside or quashing Ext.P5 email communication/decision taken by 7<sup>th</sup> respondent;
- (vii) Issue a writ of mandamus or any other appropriate writ commanding 7<sup>th</sup> respondent to consider and decide Ext.P1 complaint afresh in accordance with Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; "

3. The grievance stated in the writ petition is that a video was uploaded on YouTube, which is defamatory to the Marthoma community and its Rev. Bishop. It is stated that the video is scandalous and has insulted the entire community, and it is aimed at creating a rift between the believers and to create a breach of peace and law and order. The petitioner has preferred Ext.P1 complaint under Rule 3(2) read with Rule 4(1)(c) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter referred to as 2021



2024:KER:90640

Rules) before the 7<sup>th</sup> respondent. According to the petitioner, the said complaint had not been addressed. The petitioner also submits that Ext.P2 complaint had been preferred before the 5<sup>th</sup> respondent.

4. The contention of the petitioner is that the 5<sup>th</sup> respondent has not acted in accordance with the letter and spirit of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (hereinafter referred to as the 2009 Rules). It is also contended that the 6<sup>th</sup> and 7<sup>th</sup> respondents, who are significant social media intermediaries under the 2021 Rules, have failed in their statutory responsibilities to regulate and curate the contents of materials that are uploaded. It is also contended that the objectionable video contravenes and violates the user agreement and YouTube community guidelines issued by the 6<sup>th</sup> respondent. According to the petitioner, under Section 69A of the Information Technology Act, 2000 ('the Act' for short) and the 2009 Rules, the Central Government can block online media content. According to the petitioner, the video in question comes within the purview of Section 69A of the Act.



2024:KER:90640

5. The writ petition was amended since, by Ext.P5 email dated 25.10.2022, the 6<sup>th</sup> and 7<sup>th</sup> respondents informed that they are not in a position to adjudicate the veracity of the postings and cannot remove video postings based on allegations of defamation. The reply also says that if the matter is adjudicated by a Court of competent jurisdiction, they are prepared to comply with any orders of the Court.

6. The respondents 1 to 3 have filed a counter affidavit detailing the legal provisions. The 7<sup>th</sup> respondent also has filed a counter affidavit, wherein it is stated that they cannot become an arbiter of the content made available on YouTube and their role is only as an intermediary. Reliance is placed on in the decision in **Shreya Singhal vs. Union of India [(2015) 5 SCC Page 1]**, wherein it has been held that it is very difficult for intermediaries like Google, Facebook, etc., to act when millions of requests are made, and the intermediary is then to judge as to which of such requests are legitimate and which are not.

7. Heard Sri George Varghese Perumpallikuttiyil, learned counsel for the petitioner, Sri V.Gireesh Kumar (CGC) for respondents 1 to 3, Sri Sunil Kumar Kuriakose, Government



2024:KER:90640

Pleader for respondents 4 and 5, Sri Santhosh Mathew, Senior Advocate, instructed by Sri Riji Rajendran for respondents 6 and 7 and Sri Sunil Mathew for the additional 8<sup>th</sup> respondent.

8. The issue involved is no longer *res integra*. The scope of Section 69A and Section 79 of the IT Act, 2000, has been considered by the Hon'ble Supreme Court in the decision in **Shreya Singhal (supra)**. Regarding Section 69A, the Court held that, unlike Section 66A, Section 69A is a narrowly drawn provision with several safeguards, that blocking can only be resorted to where the Central Government is satisfied that it is necessary to do, that such necessity is relatable only to some of the subjects set out in Article 19(2) of the Constitution of India and that reasons have to be recorded in writing in the blocking order so that they may be assailed in a writ petition under Article 226 of the Constitution of India. A reading of Section 69A would show that the power is exercised "in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States, or public order, or for preventing incitement to the commission of any cognizable offense relating to above."



9. Section 79 of the Act deals with the exemption from liability of intermediaries in certain cases. Section 79 reads thus;

**“79. Exemption from liability of intermediary in certain cases.-**

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing, access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not-

(i) initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select transmission; or modify the information contained in the transmission

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its



agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation. -For the purposes of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary."

10. As per Section 79(3), the exemption from liability shall not apply if the intermediary upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act and the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner. The Hon'ble Supreme Court in **Shreya Singhal (supra)** considered the above provision and held as follows;

"**121.** It must first be appreciated that Section 79 is an exemption provision. Being an exemption provision, it is closely related to provisions which provide for offences



including Section 69A. We have seen how under Section 69A blocking can take place only by a reasoned order after complying with several procedural safeguards including a hearing to the originator and intermediary. We have also seen how there are only two ways in which a blocking order can be passed - one by the Designated Officer after complying with the 2009 Rules and the other by the Designated Officer when he has to follow an order passed by a competent court. The intermediary applying its own mind to whether information should or should not be blocked is noticeably absent in Section 69A read with 2009 Rules.

**122.** We have been informed that in other countries worldwide this view has gained acceptance, Argentina being in the forefront. Also, the Court order and/or the notification by the appropriate Government or its agency must strictly conform to the subject matters laid down in Article 19(2). Unlawful acts beyond what is laid down in Article 19(2) obviously cannot form any part of Section 79. With these two caveats, we refrain from striking down Section 79(3)(b)."

11. It can be seen that the word "actual knowledge" in Section 79(3) (b) is to be understood as "the actual knowledge that a Court order has been passed to expeditiously remove or disable access." Section 79(3)(b) has to be read down to mean that the intermediary upon receiving actual knowledge that a



2024:KER:90640

court order has been passed asking it to expeditiously remove or disable access to certain material must then fail to expeditiously remove or disable access to that material. This is for the reason that otherwise it would be very difficult for intermediaries like Google, Facebook, etc. to act when millions of requests are made and the intermediary is then to judge as to which of such requests are legitimate and which are not. Conclusions of the Hon'ble Apex Court in the above judgment are found in paragraph No.124 which reads thus;

- 124.** In conclusion, we may summarise what has been held by us above:
- 124.1** Section 69A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2).
- 124.2** Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 are constitutionally valid.
- 124.3** Section 79 is valid subject to Section 79(3) (b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relating to Article 19(2) are



going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology "Intermediary Guidelines" Rules, 2011 are valid subject to Rule 3 sub-rule (4) being read down in the same manner as indicated in the judgment.

**124.4** Section 118(d) of the Kerala Police Act is struck down being violative of Article 19(1) (a) and not saved by Article 19(2)."

12. In view of the categoric pronouncement by the Hon'ble Supreme Court, the direction sought against respondents 6 and 7 cannot be granted for removal of the alleged objectionable video, so long as there are no orders of the Court finding that the material in question is defamatory. The content that has been uploaded also does not fall within the scope of Section 69A of the Act since it is not alleged to be something affecting the sovereignty and integrity of India, the defence of India, the security of the State, or friendly relations with foreign States. Apart from alleging that the material is defamatory, there is no specific allegation that it amounts to incitement to the commission of any cognizable offense relating to the earlier mentioned aspects like sovereignty and interest of India, etc. The prayer for quashing



2024:KER:90640

Ext.P5 also cannot be sustained since the reply is justified, going by the limited statutory obligations of the intermediary.

The writ petition fails and is dismissed.

Sd/-  
**T.R. RAVI**  
**JUDGE**

sn/dsn



2024:KER:90640

APPENDIX OF WP(C) 36896/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE EMAIL DATED 23.10.2022 MAILED BY THE PETITIONER TO THE 7TH RESPONDENT - RESIDENT GRIEVANCE OFFICER FOR YOUTUBE ALONG WITH THE COMPLAINT UNDER RULE 3(2) R/W RULE 4(1)(C) OF THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021.
- Exhibit P2 A TRUE COPY OF THE EMAIL DATED 31.10.2022 MAILED BY THE PETITIONER TO THE 5TH RESPONDENT- NODAL OFFICER ALONG WITH THE COMPLAINT PREFERRED UNDER THE INFORMATION TECHNOLOGY (PROCEDURE AND SAFEGUARDS FOR BLOCKING FOR ACCESS OF INFORMATION BY PUBLIC) RULES, 2009 R/W SECTION 69A OF THE INFORMATION TECHNOLOGY ACT, 2000.
- Exhibit P3 A TRUE COPY OF THE USER AGREEMENT ISSUED BY 6TH RESPONDENT AS TERMS OF SERVICE.
- Exhibit P4 A TRUE COPY OF THE COMMUNITY GUIDELINES ON HATE SPEECH POLICY ISSUED BY 6TH RESPONDENT
- Exhibit P5 A TRUE COPY OF THE EMAIL COMMUNICATION DATED 25.10.2022 ISSUED BY THE 7TH RESPONDENT TO THE PETITIONER
- EXHIBIT P6 A TRUE COPY OF THE SCREENSHOT OF THE EMAIL-ID OF THE PETITIONER'S COUNSEL RETURNING THE SEARCH RESULT FOR '&#8216;THE YOUTUBE LEGAL SUPPORT TEAM' RETRIEVED ON 30.09.2023
- EXHIBIT P7 A TRUE COPY OF EMAIL COMMUNICATION DATED 20.11.2022 ISSUED BY THE 7TH RESPONDENT TO THE PETITIONER

RESPONDENT EXHIBITS

- EXHIBIT R1(A) TRUE COPY OF THE IT RULES, 2021