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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 9th December, 2019

+ W.P.(C) 11394/2019

ASHWINI KUMAR UPADHYAY Petitioner

Through: Petitioner in person

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Anil Soni, CGSC with
Mr. Devesh Dubey, Adv. for R-1/UOI
Mr. P.R. Chopra, Adv. for R-3/ECI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

09.12.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

W.P.(C) 11394/2019

1. This Public Interest Litigation has been preferred with the following prayers :

“a) direct the Central Government to take appropriate steps to link social media accounts with AADHAAR or PAN or Voter ID or any other identification proof to weed out fake, duplicate and ghost accounts in order to control fake news & paid news;

b) in the alternative, direct the Central Government to take apposite steps to deactivate fake, duplicate and ghost social media accounts in order to control fake news and paid news; particularly when the Model Code of Conduct is in force;

c) direct and declare that the phrase 'other similar apparatus' in Section 126(l)(b) of the Representation of the People Act 1951, includes Radio, Print Media, Digital Media and Social Media;

d) direct and declare that publication of 'Paid News' and Political Advertisements during last 48 hours before the poll, is corrupt practice under S. 123(4) of Representation of People Act, 1951,

e) take such other steps as this Hon'ble Court may deem fit and proper in facts and circumstances of the case and ensure free and fair election and allow the costs of petition to petitioner."

2. Petitioner appearing in person submits that suffice it will be for the disposal of this writ petition if a suitable direction is given to the respondents with respect to prayer (a). So far as other prayers are concerned, liberty may be reserved with the petitioner to file appropriate litigation with proper averments, allegations and annexures.

3. Thus, this writ petition is confined only to prayer (a) which is about seeking direction upon the Central Government to take appropriate steps to link social media accounts with AADHAR or PAN or Voter ID or any other identification proof to weed out the following :

- (a) fake accounts;
- (b) ghost accounts (as mentioned by the petitioner in person);
- and
- (c) duplicate accounts

especially on Twitter, Facebook and Google accounts.

4. Having heard petitioner in person and learned counsel for the respondents and looking to the facts and circumstances of the case, it appears that the aforesaid prayer (a) relates to—

- (i) drafting of a new policy by the respondent- Union of India; or
- (ii) amendment in the relevant laws which are already in existence like Information Technology Act, 2000; or
- (iii) after proper discussion, deliberations and subsequent final decision be taken by the respondent-Union of India upon a report by the Law Commission (as submitted by the counsel for the Union of India).

5. Petitioner in person submits that there are thousands of fake accounts, ghost accounts and duplicate accounts in operation and to weed out these accounts, the same needs to be linked with AADHAR/PAN/Voter ID Card/or any other identification proof. Petitioner in person, further submits that 18 to 20% of the total accounts are fake on social media. It ought to be kept in mind that to weed out these fake accounts on the social media, if the direction is given to link all these accounts with Aadhar/PAN/Voter ID, it would lead to transferring AADHAR/PAN/Voter ID data to the organisations in foreign country. Since 80% of the social media account

holders are genuine, therefore, such type of direction for linkage of AADHAR/PAN/Voter ID details if ordered by this court, they may ultimately lead to a situation where data of genuine account holders (who are 80% of the total) will also unnecessarily go to the organisations in foreign country.

6. Thus, linkage of AADHAR/PAN/Voter ID details or any other identification proof with the social media of the accounts to weed out fake accounts requires either a policy to be drafted by the Union of India or a need to amend the existing laws or if any report is given by the Law Commission in this regard, the same is to be appreciated by the Union of India. This exercise of drafting of a policy or amendment in the law or appreciation of the report of the Law Commission for linkage of AADHAR/PAN/Voter ID details with social media, all pertains to policy decision to be taken by the respondents. We are not inclined to give any direction to the respondents since Union of India is already deliberating upon this issue, as submitted by learned counsel for the Union of India. If the social media accounts are linked with AADHAR/PAN/Voter ID then the details of genuine account holders will also be at stake, therefore, this crucial aspect is to be properly appreciated by the Union of India while taking decision in this regard.

7. The role of the court is primarily to interpret the law “as it is”. We are not concerned with the “law as it ought to be”. The primary role of the court, as per theory of positivism, is to interpret the law and not to make the law, except in exceptional cases like when there is a small gap in the law or where the law is silent. Whenever any crucial aspect of the matter is to be appreciated by Union of India, it cannot be treated as a small gap. On the

contrary, it requires a detailed policy decision or a detailed amendment in the existing law especially for the prayer as prayed for in this writ petition, which is having far reaching consequences upon the genuine account holders on social media.

8. To do a small good, by weeding out fake/ghost/duplicate accounts, majority of genuine account holders data will be at stake. These aspects of the matter will be appreciated by the respondent-Union of India while enacting a policy for the aforesaid purpose or while amending the existing law after appreciating the report given by the Law Commission after due discussion/deliberations etc.

9. Thus, no writ and much less a writ of mandamus can be issued by this court for –

- (a) drafting of the policy by the Union of India, nor
- (b) for the amendment in the existing law like Information Technology Act, 2000, or
- (c) any direction can be given to the Union of India, as how to discuss, deliberate and decide upon the report given by the Law Commission, -

while exercising our powers under Article 226 of the Constitution of India.

10. We therefore expect from the respondent-Union of India that they will take the policy decision in accordance with law, rules, regulations keeping in mind the aforesaid observation of this court properly.

11. With these observations, this writ petition is hereby disposed of.

12. Liberty is reserved with this petitioner to agitate his other grievances at an appropriate stage by filing appropriate proceedings for rest of the prayers.

CHIEF JUSTICE

C.HARI SHANKAR, J.

DECEMBER 09, 2019/kr

