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

+ **W.P.(C) 1227/2024**

MOHAMMAD HAMIM AND ANR.

..... Petitioner

Through: Mr. Colin Gonslaves, Senior Advocate with Ms. Kawalpreet Kaur, Advocate

versus

FACEBOOK INDIA ONLINE SERVICES PVT. LTD. AND ORS.

..... Respondent

Through: Mr. Arvind P. Datar, Senior Advocate with Mr. Tejas Karia, Mr. Varun Pathak, Mr. Shashank Mishra, Mr. Shyamlal Anand, Mr. Vishesh Sharma, Ms. Ramayni Sood and Mr. Rahl Unnikrishnan, Advocates for Meta Platforms Inc. for Respondent Nos. 1 and 2
Mr. Apoorv Kurup, CGSC with Ms. Nidhi Mittal and Ms. Gauri Goburdhun, Advocates for R-3/UOI

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Date of Decision: 30th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

1. The present writ petition has been filed seeking appropriate directions to Respondent Nos. 1 and 2 to monitor and suspend the hate speech and



harmful content that originates in India from its platform i.e., 'Facebook' and is directed towards the Rohingya community, both in India and elsewhere. In addition, the Petitioners seek a direction to Respondent Nos. 1 and 2 to halt the use of its virality and ranking algorithms, which encourages hate speech and violence against minority communities. The learned senior counsel for the Petitioners at the beginning of the hearing has also handed over an application for amending the petition to the extent of issuance of a direction to Respondent No. 3, i.e., Union of India, to take steps in accordance with law for restraining Facebook from, inter alia, promoting hate speech covered under Section 153-A(1)(b) of the Indian Penal Code, 1860 ('IPC') and more particularly against the Rohingya community.

2. At the outset, Mr. Arvind P. Datar, learned senior counsel for Respondent Nos. 1 and 2 states that the Respondent Nos. 1 and 2 have been wrongly impleaded and the correct description of the said Respondents is Meta Platforms Inc. The said statement is taken on record.

3. Mr. Colin Gonsalves, learned senior counsel for the Petitioners states that the present petition has been filed as a Public Interest Litigation ('PIL') invoking Article 21 of the Constitution of India for seeking protection of the Right to Life of the members of Rohingya community in Delhi and throughout the country who face violence as a result of dissemination of hate remarks targeting them on the basis of their ethnicity and religion on the Respondent Nos. 1 and 2's platform i.e., Facebook. He states that though the hate speech originates elsewhere, it gets magnified by the algorithms of the Facebook so that the hate speech goes viral in India and abroad. He states that illustratively, the Petitioners have set out at paragraph 19 of this petition, the inflammatory posts which have been uploaded on Facebook



against the Rohingya community.

4. He contends that Facebook promotes hate speech as a part of strategy to increase its revenue. He submits that hate speech is a crime in India under Section 153-A(1)(b) of IPC and even though Respondent Nos. 1 and 2 promises to make amends, it has failed to do so with the objective of enhancing its revenue by magnifying such hate speech. He states that the Islamophobic posts constitute hate speech and is a serious crime under Sections 153-B and 500 of IPC.

5. He states that the issue of spreading and magnifying hate post as a model for generating revenue by Facebook is well-established and for this purpose he refers to reports and documents dating back to the year 2019 and until 2022. He refers to the report published by Amnesty International in the year 2022, which specifically refers to the spread of misinformation causing harm to the Rohingya community. He states that the Facebook's admission in the said report disentitles them from protection under Section 79 Act of the Information Technology Act, 2000 ('IT Act').

6. He states that it is the assertion of the Petitioners that the Respondent Nos. 1 and 2 in delivering content through recommendation services such as suggestions, actively promotes hate content. He states that the reactionary action of taking down posts after they are reported is not sufficient. He states that even when the harmful content is reported there is no guarantee that it will be taken down and is often found restored.

7. He states that Respondent No. 3, i.e., Union of India, issued guidelines for communal harmony in the year 2008 and strict action against hate speech is enlisted, more specifically at paragraph 3.13 therein.

8. He states that the present writ petition seeking enforcement of the



Fundamental Right under Article 21 of the Constitution is maintainable against Respondent Nos. 1 and 2 in view of judgment of Supreme Court in ***Kaushal Kishore v. State of Uttar Pradesh & Ors.***¹. In the alternative, he prays that Union of India be given the power of prior censorship of any publication on Facebook with regard to Rohingyas.

9. Mr. Arvind P. Datar, learned senior counsel for Respondent No.1 states that Respondent No. 3 has formulated a complete regulatory network which specifically deals with the issue of hate speech. He refers to The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('IT Rules, 2021'). He states that Rule 3(b)(ii) of said Rules imposes a statutory obligation on the social media intermediary to make reasonable efforts to not disseminate information which, inter-alia, promotes enmity between different groups of community on the ground of ethnicity or religion. He states that the grievance redressal mechanism by the social media intermediary and appeal to Grievance Appellate Committee(s) is contemplated under Rules 3(2) and 3A of the IT Rules, 2021. He states that therefore, the Union of India has already affirmed its obligations of restraining hate speech by framing the said Rules.

10. He states that the Respondent Nos. 1 and 2 have taken measures and put in place mechanism for removing objectionable posts as required under the IT Rules and have been furnishing monthly reports to the Government of India. He states that in the month of November, 2023, alone, the Respondent Nos.1 and 2 have pull down more than 1 lakh objectionable posts in that month. He states that he specifically disputes the allegation of the Petitioners

¹ (2023) 4 SCC 1



that Facebook is propagating hate speech or making money out of hate speech. He states that magnifying of the news happens on account of the nature of the platform and is common to all social media intermediaries. He states that, in fact, the Petitioners have failed to verify that the posts which have been referred to in paragraph 19 of the writ petition, all (barring 3 posts which appear on the account of accredited news channel) have been pull down by Facebook in November 2023 itself and therefore, there is no cause of action to maintain the present petition.

11. He states that the relief sought by the Petitioners is in the nature of pre-publication censorship which is not within the domain of the Respondents. He relies upon the judgment of Supreme Court in *Shreya Singhal v. Union of India*² and *Google India Pvt. Ltd. v. Visaka Industries*³ and more specifically paragraphs 54, 55 and 57 therein.

12. He states that a similar writ petition filed before the Madhya Pradesh High Court for seeking directions to Union of India for regulating the contents broadcasted on social media intermediaries was dismissed by the Division Bench vide order dated 09th December,,2022 relying upon the order dated 20th July,,2022 passed by the Supreme Court in W.P.(C) No. 1341/2020. He emphasises that the said writ petition was dismissed in view of the promulgation of the IT Rules 2021 and Cable Television Networks (Amendment) Rules, 2021. He states that the Respondents herein as well were impleaded as Respondent No. 9 in the said writ petition before the Madhya Pradesh High Court. He states that therefore, on same considerations the present petition be also disposed of.

² (2015) 5 SCC 1

³ (2020) 4 SCC 162



13. He also relies upon the order dated 01.08.2023 passed by the Supreme Court in *Suo Moto W.P.(Crl.) No. 3/2015* titled as *Abrar Khan v. State of UP* to contend that after taking note of the regulatory mechanism set out in the IT Rules 2021, the said petition was disposed of recording satisfaction with the progress achieved by these stakeholders in addressing the issues raised in the said writ petition.

14. He lastly states that Facebook is used by over a billion people and there are reports by the Government which clearly state that Facebook and other social media platforms have taken significant steps to stop hate-speech.

15. Mr. Apoorv Kurup, learned Standing counsel appearing for Union of India states that IT Rules, 2021 have been enacted to address the specific issues raised by the Petitioners in this petition and the regulatory framework for controlling the objectionable posts, as illustrated in the writ petition, is in place. He states that in fact, in addition to the grievance redressal mechanism under Rule 3(2) and Rule 3-A, there is also an emergency provision under Rule 16 of IT Rules, 2021, which enables the Government to invoke the same for the grounds referred to under Section 69-A of the IT Act. He states that no prior notice or representation was received from the Petitioners with respect to the grievance raised in the present petition.

16. In response, learned senior counsel for the Petitioners fairly admits that the writ petition contains no reference to the IT Rules, 2021 or Cable Television Networks (Amendment) Rules, 2021. He also admits that no prior representation raising the grievances made in this petition has been raised before Union of India. He also concedes that Petitioners are not aware if the posts mentioned at paragraph 19 of the writ petition already stands



removed as stated by Respondent Nos. 1 and 2.

17. This Court has considered the submissions of the learned senior counsel for the parties and perused the record.

18. It appears from the writ petition that the Petitioners were not aware, prior to today's hearing, about either the legal obligations of the social media platforms to not promote dissemination of hate speech and exercise due diligence as stipulated in Rule 3 or the existence of the regulatory framework of IT Rules, 2021 and the grievance redressal mechanism provided under the said Rules or the power of the Union of India to issue blocking orders under Section 69A of the IT Act. In fact, as rightly contended by the learned Standing counsel for Union of India, the IT Rules, 2021, also provide for emergency blocking order under Rule 16 at the instance of the Authorized Officer. It is not the contention of the Petitioners that the said redressal mechanism is not efficacious. Consequently, this Court is of the opinion that in view of the aforesaid Rules the direction sought by the Petitioners to Union of India to restrain Facebook from allegedly promoting, amplifying, spreading hate speech covered by Section 153 and 500 of IPC and particularly hate speech against Rohingyas does not arise for consideration.

19. Similarly, the reliefs sought against Meta Platforms Inc. are not maintainable as there is no allegation in the writ petition that the said Respondents have failed to abide by its statutory obligations under the IT Rules 2021. The Petitioners have not disputed the statement made by learned senior counsel for Respondent Nos. 1 and 2 that the impugned posts mentioned at paragraph 19 of the writ petition (barring 3 posts which appear on the account of accredited news channel) stood removed in November,



2023; whereas, the present petition has been filed in January 2024 and was listed for the first time today.

20. This Court is also of the opinion that the Petitioners suggestion, during the hearing, that there should be prior censorship of any publication of Rohingyas on Facebook is an example of '*a treatment that is worse than the disease*'.

21. It is further settled law that where an Act provides a complete machinery for redressal the aggrieved party is not permitted to abandon that machinery to invoke jurisdiction of High Court under Article 226 of the Constitution.

22. Consequently, as there is a robust grievance redressal mechanism in existence, the Petitioners have an alternative efficacious remedy and are at liberty to avail the redressal mechanism as per IT Rules, 2021, with respect to any objectionable posts. Accordingly, with the aforesaid observations and liberty, the present writ petition and pending applications are disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 30, 2024/hp/aa