

ITEM NO.2

COURT NO.4

SECTION PIL(W)

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(s) (Civil) No(s). 177/2013

KAMLESH VASWANI

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with appln. (s) for directions and impleadment as party respondent and intervention and office report)

Date : 26/02/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. Vijay Panjwani, AOR
Mr. Kundan Lal, Adv.

For Respondent(s) Ms. Pinky Anand, ASG
Ms. Manita Verma, Adv.
Haripriya Padmanandan, Adv.
Mr. S.N. Terdal, Adv.
Mr. Rakesh Ranjan, Adv.
Mr. T.C. Sharma, Adv.
Mr. parthiv Goswami, Adv.
Mr. Prabal Bagchi, Adv.
Ms. Somya Rathore, Adv.
Ms. Kritika Sachdeva, Adv.
Ms. Snidha Mehra, Adv.
Mr. Haran Sethi, Adv.
Ms. Surajita Pattanaik, Adv.
Mr. Rishabh Jain, Adv.
Ms. Madhavi Divan, Adv.
Ms. Nidhi Kaang, Adv.
Mr. D.S. Mahra, AOR
Ms. Sushma Suri, AOR

Mr. Prasanth P., AOR

Mr. Mohit Singh, Adv.
Mr. Rahul Narayan, AOR

Ms. Jyotika Kalra, AOR

Ms. Mahalakshmi Pavani, Sr. Adv.

Ms. Sneha Kalita, AOR

Ms. Shiva Vijaykumar,

Ms. Prerna Kumari, Adv.

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

I.A. No.5 of 2015 in WP (C) No.177 of 2013

This is an application for intervention by the Supreme Court Women Lawyers Association through its General Secretary. Regard being had to the factual score, we think it appropriate to allow the application and accordingly the prayer for intervention stands allowed.

The interlocutory application stands disposed of.

I.A. No.2 of 2013 and I.A. No.6 of 2015 in WP (C) No.177 of 2013

Though the prayers made in these interlocutory applications are different yet the main assertions are the same and the prayers, in a way, proceed on the same path.

In I.A. No.2 of 2013, it has been prayed to direct the respondents to block the pornography websites, platforms, links, or downloading by whatever other internet means or name in order to prevent easy access whether in private or public and pass such other order/orders as may be deem fit.

In I.A. No.6 of 2015, the prayer is multi-fold. We think it apt to enumerate the prayers :-

"a) to issue appropriate directions to Ministry of Communication and Information Technology

(I) to take measures to promote the dissemination and improvement of filtering services.

(ii) to take strict measures to prevent distribution and access to pornography including measures regarding file sharing software.

(iii) to adopt various measures towards improvement in the effectiveness of blocking Child pornography on the Internet and to take measures to eliminate child pornography.

b) to issue appropriate directions to Ministry of Women & Child Development

(i) for enhancement and to strengthening of protective measures to reinforce support for victims (both child and women).

(ii) to take effective steps to promote public relations and awareness raising activities concerning risks and proper use of the Internet.

c) to issue appropriate directions to the Ministry of Human Resource Development

(i) to direct that jammers be installed inside the school premises and in the school buses to prevent access of pornographic sites on the cell phones by the Driver or anyone who is in charge of the children in the Buses.

(ii) to direct to have one male and female child counselor in every school and special workshop to be conducted in schools for awareness of sex education."

It is submitted by Mr. Panjwani, learned counsel appearing for the applicant in I.A. No.2 of 2013 that the Central Government is required to make certain rules and regulations initially to stop the child pornography and thereafter to proceed to deal with all

other grievances that have been put forth in the petition.

Ms. Mahalakshmi Pavani, learned senior counsel appearing in I.A. No.6 of 2015, has expressed her agony by submitting that the child pornography is spreading like cancer and it would not be out of place to call it a moral cancer not on the ground of individual morality but on the foundation of obscenity which is an offence under the Indian Penal Code. Learned senior counsel has brought to our notice how a school bus driver and his helper were arrested as they had forced the school children to watch pornography on their mobile phones and molested them. We have referred to the same not for any other purpose but to note the anguish put forth by the learned senior counsel appearing for the Supreme Court Women Lawyers Association that the children need to be protected from this kind of moral assaults, for these moral assaults have the potentiality to bring them physical disasters.

Ms. Pinky Anand, learned Additional Solicitor General shall obtain instructions in this regard and file an appropriate affidavit of the competent authority to suggest the ways and means so that these activities are curbed. The innocent children cannot be made prey to these kind of painful situations, and a nation, by no means, can afford to carry any kind of experiment with its children in the name of liberty and freedom of expression. When we say nation, we mean each member of the collective.

Mr. Panjwani, learned counsel would submit that watching pornography or being compelled to watch pornography in a public

place can never come within concept of freedom of speech or expression or thought as enshrined under Article 19(1)(a) of the Constitution, for the freedom, as envisaged under the Constitution, is not absolute. Learned counsel would submit that the freedom of speech cannot create a dent in the national character or the moral spine of the nation which comes within the constitutional morality because various provisions under the Indian Penal Code deal with them that have been regarded as constitutionally valid.

Ms. Pavani, learned senior counsel would submit that this Court may think of directing the Central Government to prohibit watching pornographic materials in any form at public places. Ms. Pinky Anand, learned Additional Solicitor General submitted that as far as the child pornography is concerned, exercise has been undertaken and the Central Government shall come with the scheme so that appropriate directions in that regard can be issued.

The petitioners are at liberty to give their suggestions to Ms. Pinky Anand so that she can pass it on to the competent authority of the Central Government. If the Union of India so desires, it can ask for suggestions from the National Commission For Women and we are sure the said Commission would give its suggestions to the Union of India.

Let the matter be listed on 28.03.2016.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master