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

Date of decision: 21st November, 2022

+ **CS(COMM) 45/2021 & I.As. 1353/2021, 9877-78/2021**

GUJARAT COOPERATIVE MILK MARKETING FEDERATION

LTD & ANR.

..... Plaintiff

Through: Mr. Abhishek Singh, Ms. Elvin Joshy,
Mr. J. Amal Anand, Mr. Ujjawal
Verma and Ms. Alisha Sharma,
Advocates. (M:9910291290)

versus

SUJAY KUMAR & ORS.

..... Defendants

Through: Ms. Smriti Sinha, Ms. Vasundhara
Nagrath & Ms. Shriyanshi Pathak,
Advocates for D-1 (M:9810319192)
Mr. Tejas Karia, Mr. Gauhar Mirza,
Ms. Ameer Rana, Mr. Yash
Karunakaran & Mr. Vishesh Sharma,
Advocates for D-2/ Meta Platforms
(M:7434045442)
Mr. Deepak Gogia & Mr. Aadhar
Nautiyal, Advocate for D-3.
(M:9871088916)
Mr. Nikhil Singhvi and Mr. Bilal
Ikram, Advocates for D-4.
Mr. Arvind Nigam, Sr. Advocate with
Mr. Aditya Gupta, Ms. Aishwarya
Kane & Mr. Sauhard Alung,
Advocates for Google Ireland.
Mr. Neel Mason, Mr. Vihan Dang &
Mr. Aditi Umapathy, Advocates for
D- 6/Google LLC (M:7999640697).

And

+ **CS(COMM) 273/2021 & I.As. 9385/2021, 15944/2021**

GUJARAT COOPERATIVE MILK MARKETING FEDERATION
LTD & ANR. Plaintiffs

Through: Mr. Abhishek Singh, Ms. Elvin Joshy,
Mr. J. Amal Anand, Mr. Ujjawal
Verma and Ms. Alisha Sharma,
Advocates.

versus

RISHABH KAUSHAL & ORS. Defendants

Through: Ms. Vasundhara Nagrath, Advocates
for D-1 (M:9810319192)
Mr. Tejas Karia, Mr. Gauhar Mirza,
Ms. Ameer Rana, Mr. Yash
Karunakaran & Mr. Vishesh Sharma,
Advocates for D-2/ Meta Platforms
Mr. Deepak Gogia & Mr. Aadhar
Nautiyal, Advocate for D-3.
Mr. Nikhil Singhvi and Mr. Bilal
Ikram, Advocates for D-4.
Mr. Arvind Nigam, Sr. Advocate with
Mr. Aditya Gupta, Ms. Aishwarya
Kane & Mr. Sauhard Alung,
Advocates for Google Ireland.
Mr. Neel Mason, Mr. Vihan Dang &
Mr. Aditi Umapathy, Advocates for
D- 6/Google LLC

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The issue that has arisen in *I.As. 9878/2021* and *9385/2021* in *CS (COMM) 45/2021* and *I.A. 15944/2021* in *CS(COMM) 273/2021* is in respect of the disclosure of Basic Subscriber Information (BSI) details of the

proposed Defendant No.5 – M/s. WIDEOPEN, which allegedly uploaded the objectionable YouTube video in the present matters.

3. The stand of Defendant No.6 - Google LLC is that the access to the said YouTube video has been blocked within India. Mr. Neel Mason, Id. Counsel for Google LLC submits that if the person uploading the impugned video is based in India, then the BSI details thereof are available with Google LLC. However, in the present case, where the person uploading the impugned video is not based in India, the said BSI details are not available with Google LLC, and Google Ireland is the custodian of the relevant data. Hence, Google LLC is unable to disclose the required BSI details of M/s. WIDEOPEN as the same are stored with and are under the control of Google Ireland, which is subject to the laws of Ireland, as also, the General Data Protection Regulation (GDPR).

4. Mr. Arvind Nigam, Id. Senior Counsel appearing for proposed Defendant No.7 - Google Ireland submits that it is bound by Article 48 of GDPR. The said provision is extracted below:

“Transfers or disclosures not authorised by Union law:

Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer pursuant to this Chapter.”

5. Mr. Nigam, Id. Senior Counsel also relies upon the following provision of the Foreign Tribunals Evidence Act, 1856 (Ireland):

“Order for Examination of Witnesses in this Country in relation to any Civil or Commercial Matter pending before a Foreign Tribunal

I. Where, upon an Application for this Purpose, it is made to appear to any Court or Judge having Authority under this Act that any Court or Tribunal of competent Jurisdiction in a Foreign Country, before which any Civil or Commercial Matter is pending, is desirous of obtaining the Testimony in relation to such Matter of any Witness or Witnesses within the Jurisdiction of such first-mentioned Court, or of the Court to which such Judge belongs, or of such Judge, it shall be lawful for such Court or Judge to order the Examination upon Oath, upon Interrogatories or otherwise, before any Person or Persons named in such Order, of such Witness or Witnesses accordingly, and it shall be lawful for the said Court or Judge, by the same Order, or for such Court or Judge or any other Judge having Authority under this Act, by any subsequent Order, to command the Attendance of any Person to be named in such Order, for the Purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Order, and to give all such Directions as to the Time, Place, and Manner of such Examination, and all other Matters connected therewith, as may appear reasonable and just; and any such Order may be enforced in like Manner as an Order made by such Court or Judge in a Cause depending in such Court or before such Judge.”

6. Reliance is also placed upon Order 39 Rule V of the Superior Court Rules (Ireland), which is extracted below:

“V. Obtaining evidence for foreign tribunals

39. Where under the Foreign Tribunals Evidence Act 1856, or the Extradition Act 1870, section 24, any civil or commercial matter, or any criminal matter, is pending before a court or tribunal of a foreign country, and it is made to appear to the Court, by commission rogatoire, or letter of request or other evidence as hereinafter provided, that such court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the Court may, on the ex parte application of any person shown to be duly authorised to make the application on behalf of such foreign court or tribunal, and on production of the commission rogatoire, or letter of request, or other evidence pursuant to the Foreign Tribunals Evidence Act 1856, section 2, or such other evidence as the Court may require, make such order or orders as may be necessary to give effect to the intention of the Acts above mentioned in conformity with the Foreign Tribunals Evidence Act 1856, section 1.”

7. On the basis of the above, the submission of Mr. Nigam, Id. Senior Counsel is that a conjoint reading of Article 48 of GDPR, the Foreign Tribunals Evidence Act, 1856, and the Superior Court Rules (Ireland), shows that the only manner in which the BSI details of M/s. WIDEOPEN can be obtained currently, pursuant to the orders of an Indian Court, would be either by means of a legal process through Irish Courts or by way of a Letters Rogatory through the Government. He submits that in the absence of

a 'Mutual Legal Assistance Treaty' between India and Ireland, there is no other procedure to obtain the said data.

8. Mr. Singh, Id. Counsel for the Plaintiff relies upon the judgments of this Court in *Neetu Singh & Anr. v. Telegram FZ LLC & Ors.* [CS(COMM) 282/2020 decided on 30th August, 2022], as also, *Swami Ramdev & Anr. v. Facebook, Inc. and Ors.* [2019 SCC Online Del 10701], to argue that since the video is admittedly controlled and managed by Google LLC, the relevant data ought to be disclosed by Google LLC.

9. Considering the submissions made today, it is deemed appropriate to issue notice to Mr. Anurag Ahluwalia, Id. CGSC [Email: anuragcgsc@gmail.com; M: 9811418995] to obtain instructions as to whether there exists any 'Mutual Legal Assistance Treaty' between India and Ireland, as also, any other relevant developments including in respect of the data protection laws in India.

10. List on 9th February, 2023. These shall not be treated as part-heard matters.



PRATHIBA M. SINGH
JUDGE

NOVEMBER 21, 2022
dj/ad

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