

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C). No. 5626 of 2021

In the matter of:

Amit Acharya

...PETITIONER

Vs.

Union of India & Anr.

...RESPONDENTS

N.D.O.H.:06.07.2021

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RESPONDENT NO. 1

एन. समाया बालन/N. SAMAYABALAN
वैज्ञानिक 'ई' /Scientist 'E'
भारत सरकार/Government of India
इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी मंत्रालय
Ministry of Electronics & Information Technology
6, सीजीओ कॉम्प्लेक्स/6, CGO Complex
नई दिल्ली-110 003 /New Delhi-110 003

Through

Place: Delhi

Date: 05.07.2021

(RIPUDAMAN SINGH BHARDWAJ)

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P. (C). No. 5626 of 2021****In the matter of:****Amit Acharya****...PETITIONER****Vs.****Union of India &Anr.****...RESPONDENTS****SHORT AFFIDAVIT ON BEHALF OF THE RESPONDENT
NO.1 – MINISTRY OF ELECTRONICS AND INFORMATION
TECHNOLOGY, GOVERNMENT OF INDIA.****I, N. Samaya Balan**

do hereby solemnly affirm and sincerely state as follows:

1. I am acquainted with the facts of the present case and competent to swear this affidavit on behalf of Respondent No.1.
2. I submit that the Respondent No.1 [Ministry of Electronics and Information Technology (MeitY), Government of India], is the custodian of the Information Technology Act 2000 (IT Act, 2000) and is responsible for administering the same. The Respondent No.1 performs its lawful obligations as mandated under the IT Act, 2000, and Rules framed thereunder.

3. I submit that the Petitioner has stated that he is a user of the services of Respondent No. 2 and that he came across some tweets which are allegedly defamatory in nature (mentioned at Para 8 and 9 of the writ petition). Upon seeking to register a complaint, the Petitioner only found contact details of a grievance officer located in the US on the website/mobile app of Twitter. Aggrieved by the non-implementation of the IT Rules, 2021 by Twitter the Petitioner prayed as follows:

“1. Issue an appropriate Writ or direction to Respondent No. 1 i.e. Union of India to pass necessary instruction/order to Respondents 2-3 to appoint Resident Grievance Officer under Rule 4 of the Information Technology (Intermediary Guidelines and Digital Ethics Code) Rules 2021 without any delay;

2. Issue any appropriate writ of any nature or direction against respondent 1 and 3 to discharge their executive, statutory and all other obligations in relation to Information Technology (Intermediary Guidelines and Digital Ethics Code) Rules 2021 without any delay;

3. Issue an appropriate Writ or direction to Respondent No. 2-3 to implement Information Technology (Intermediary Guidelines and Digital Ethics Code) Rules 2021 in true letter and spirit by appointing Resident Grievance Officer under Rule 4 of the Information Technology (Intermediary Guidelines and Digital Ethics Code) Rules 2021 without any delay;

4. Pass any other and further order (s) and direction (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

4. I submit that the Respondent No.1 (MeitY) in the exercise of the powers conferred by sub-section (1), clauses (z) and (zg) of sub-section (2) of section 87 of the Information Technology Act, 2000 (21 of 2000), and in supersession of the *Information Technology (Intermediaries Guidelines) Rules, 2011*, notified the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* (hereinafter "IT Rules, 2021") on 25th February 2021 in the Official Gazette.
5. I submit that Respondent No.2 admittedly qualifies as a Significant Social Media Intermediary ("SSMI") as defined under Rule 2(1) (v) of the IT Rules 2021. Hence, Respondent No. 2 is obligated to comply with the provisions of the IT Rules, 2021 and the compliances set out therein. I state that Rule 3 provides for various due diligence obligations to be followed by all intermediaries to avail exemptions from liability as mandated under section 79(1) of the Information Technology Act, 2000. Rule 4 provides for additional due diligence to be complied with by SSIMs.
6. I submit that the Government of India notified the IT Rules, 2021 on 25.02.2021. On 26.02.2021 the threshold limit of number of registered users for an intermediary to qualify as an SSMI was

notified. That a sufficient period of three months from this date, i.e. from 26.02.2021 was granted to all SSIMs to comply with the additional due diligences set out under Rule 4 of the IT Rules, 2021. Thus, from 26.05.2021 onwards, all SSIMs are mandatorily required to comply with the obligations set out in Rule 4 of the IT Rules, 2021.

7. I submit that the Petitioner being a ‘user’ under Rule 2 (1) (x) may exercise his rights and avail the remedies provided under the IT Act, 2021. I state that the IT Rules, 2021 set out a clear mechanism and specific timelines grievance redressal and removal of the offending content on online platforms. In this regard, the significant provisions of the IT Rules, 2021 are summarized below:

(a) Removal of Offending Content:

As per Rule 3(1)(d), an intermediary, upon receiving ‘actual knowledge’ through a court order or upon being notified by appropriate government or its agency, shall remove within thirty-six hours any unlawful information which is prohibited under any law in relation to interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, incitement to an offence or any information which violates any law for the time being in force.

(b) Grievance Officer and Time-Bound Redressal Mechanism:

As per rule 3(2)(i) all intermediaries shall prominently publish on its website, mobile based application or both, the name of the Grievance Officer and his contact details, as well as the mechanism by which an individual or any person may file a complaint. The IT Rules 2021 require the grievance officer to acknowledge the complaint within twenty-four hours and dispose it within fifteen days from the date of its receipt.

(c) Additional Due Diligence:

Rule 4 relates to “Additional Due Diligence” to be observed by SSIMs. This rule mandates SSIMs (including Respondent No. 2) to: -

- (i) Appoint a Chief Compliance Officer, who shall be a resident of India and be responsible for ensuring compliance with the Act and Rules - rule 4(1)(a).
- (ii) Appoint a Nodal Contact Person who shall be a resident of India for a 24x7 coordination with law enforcement agencies to ensure compliance to their orders or requisitions - rule 4(1)(b). Such person should be other than the Chief Compliance Officer.
- (iii) Appoint a Resident Grievance Officer to handle grievances of users and victims - rule 4(1)(c).
- (iv) have a physical contact address in India published on its public platforms, for the purpose of receiving communications addressed to it.
- (v) enable a mechanism that provides a unique ticket number for every complaint or grievance, which enables the

complainant to track the status of such complaint or grievance - rule 4(6)

(d) Rule 7 provides that when an intermediary fails to observe these Rules, the provisions of section 79 (1) will not be available and the intermediary shall be liable for any punishment under any law for the time being in force in respect of the offending content.

8. I state that the Respondent No.2 (Twitter Inc) is admittedly "intermediary" within the meaning of Section 2(1)(w) of IT Act, 2000 and an SSMI 'under the IT Rules 2021. In spite of the three months' time granted to all SSMIs to comply with the IT Rules 2021 having expired on 26.05.2021, Respondent No. 2 has failed to fully comply with the same.
9. I submit that the Respondent No.2 (Twitter Inc) had initially appointed the interim Resident Grievance Officer and the interim Nodal Contact Person. Later the Respondent No.2 (Twitter Inc) informed the answering Respondent that the said interim Resident Grievance Officer and Nodal Officer have withdrawn/resigned from their positions. I submit that as per the details gleaned from the Respondent No. 2 website/mobile application, in the interim the grievances from India are being handled by personnel of Respondent No. 2 situated in the United State of America which amounts to non-compliance with the IT Rules 2021.

10.I submit that the Respondent No.2 (Twitter Inc) has failed to comply with the IT Rules, 2021 as on 1st July, 2021 for the following reasons:

- a. Chief Compliance Officer has not been appointed;*
- b. The position of the Resident Grievance Officer is vacant;*
and
- c. The position of Nodal Contact Person,(even on an interim basis),is vacant.*
- d. The physical contact address, which was shown to be there on 29th May, 2021 is once not again available on Twitter's website.*

11.I submit that the IT Rules, 2021 are the law of the land and Respondent No. 2 is mandatorily required to comply with the same. Any non-compliance amounts to breach of the provisions of the IT Rules, 2021 thereby leading to Respondent No. 2 losing its immunity conferred under section 79(1) of the IT Act, 2000. I state that the immunity conferred on intermediaries under section 79(1) is a conditional immunity subject to the intermediary satisfying the conditions under sections 79(2) and 79(3). As provided in Rule 7, failure to observe the IT rules,2021 results in provisions of Section 79(1) of the IT Act, 2000 not being applicable to such an intermediary.

12. That the deponent further craves leave of this Hon'ble Court to file a detailed affidavit if required or on directions of this Hon'ble Court in larger interest of Justice.
13. In light of the aforesaid submissions, this Hon'ble Court may be pleased to pass appropriate orders that it deems fit on the facts and circumstances of the case and thus render justice.
14. It is submitted accordingly.

DEPONENT

एन. समाया बालन/N. SAMAYABALAN
वैज्ञानिक 'ई' /Scientist 'E'
भारत सरकार/Government of India
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VERIFICATION: -

Verified at New Delhi on this 05th day of July 2021 that the contents of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed there from.

DEPONENT

एन. समाया बालन/N. SAMAYABALAN
वैज्ञानिक 'ई' /Scientist 'E'
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