

Janhit Manch & Ors. v. The Union of India

The petition sought a blanket ban on pornographic websites. The NGO had argued that websites displaying sexually explicit content had an adverse influence, leading youth on a delinquent path.

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE SIDE

PIL NO. 155 OF 2009

Janhit Manch and Ors. ... Petitioners

Versus

The Union of India ... Respondents

Mr. Sandeep Jalan for Petitioner in person.

Mr. A.M. Sethna for R. No. 1.

CORAM : F.I. REBELLO &

J.H. BHATIA, JJ.

DATED : MARCH 03, 2010

P.C.

Petitioner by the present petition has approached this court, seeking relief to direct the respondents to make coordinated and sustained efforts, to have a blanket ban on websites which according to Petitioners are displaying material pertaining to sex and which in their opinion is harmful to the youth of this country in their formative years.

Mr. Jalan, Petitioner No. 2 appearing in person draws our attention to amongst others to Section 67 and 67A of the Information & Technology Act, 2000. Under Section 67 if any person publishes or transmits or causes to be published or transmitted in the electronic form any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and fine which may extend to five lakh rupees. Section 67A pertains to publishing or transmitting or causing to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct can be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees.

The Act therefore, makes provision for punishment of a person against whom a complaint is filed, if such person commits the offence which falls within the purview of section 67 or 67A as the case may be. Such person can be tried and convicted. For that prosecution will have to establish that an offence has been committed.

By the present petition what the petitioner seeks is that this court which is a protector of free speech to the citizens of this country, should interfere and direct the respondents to make a coordinated and sustained efforts to close down the websites as aforesaid. Once Parliament in its wisdom has enacted a law and has provided for the punishment for breach of that law any citizen of this country including the Petitioner who is aggrieved against any action on the part of any other person which may amount to an offence has a right to approach the appropriate forum and lodge a complaint upon which the action can be taken if an offence is disclosed.

Courts in such matters, the guardian of the freedom of free speech, and more so a constitutional court should not embark on an exercise to direct State Authorities to monitor websites. If such an exercise is done, then a party aggrieved depending on the sensibilities of persons whose views may differ on what is morally degrading or prurient will be sitting in judgment, even before the aggrieved person can lead his evidence and a competent court decides the issue. The Legislature having enacted the law a person aggrieved may file a complaint.

In the light of that we are not inclined to interfere in the exercise of our extra ordinary jurisdiction. If the petitioner comes across any website/s which according to him publishes or transmits any act which amounts to offence under section 67 or 67A of the Information & Technology Act, 2000, it is upto him to file a a complaint.

With the above observations, Petition disposed of.

(J.H. BHATIA,J.) (F.I. REBELLO,J.)