

IN THE HIGH COURT OF DELHI AT NEW DELHI**W.P.(C) 3672/2012 and CM Nos.7709/2012, 12197/2012 and 6888/2013****K.N. GOVINDACHARYA Petitioner****Through: Mr Virag Gupta, Mr Vikas Chandra and Mr Rajeev Kumar Deora,
Advocates.****versus****UNION OF INDIA and ORS Respondents****Through: Mr Rajeeve Mehra, ASG with****Mr Sumeet Pushkarna, CGSC and****Mr Gaurav Sharma, Advocate for R-1/UOI.****Mr Akhil Anand and Mr Praveen Sehrawat, Advocates for R-3.****Mr Parag Tripathi, Sr. Advocate with Mr Tejas Karia, Ms Suman Kukrety,
Advocates for R-9.****Mr Arvind Nigam Sr, Advocate with Mr Neel Mason and Mr Ankit Relan,
Advocates for R-10.****CORAM:****HON'BLE MR. JUSTICE BADAR DURREZ AHMED, ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE VIBHU BAKHRU****ORDER****23.08.2013**

With regard to the issue of whether children can open accounts with social networking sites such as Facebook and Orkut, there is no dispute that children below the age of 13 years are not permitted to open such accounts. It is not in dispute that if it comes in the knowledge of any person that a child below the age of 13 years has opened such an account he may make a complaint to the social networking site who shall then take

appropriate action, after verification, for deletion of that account.

In this connection, the learned counsel for the petitioner has drawn our attention to the Information Technology (Intermediaries Guidelines) Rules, 2011. There is also no dispute that the social networking sites such as Facebook and Orkut fall within the definition of ?Intermediary? as per Rule 2(i) of the said Rules read with Section 2(1)(w) of the Information Technology Act, 2000. Therefore, the provisions of Rule 3 of the said Rules would apply to them. Rule 3 requires due diligence to be observed by the intermediary. Rule 3(1)

requires an intermediary to publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary?s computer resource by any person. There appears to be no difficulty insofar as Rule 3(1) is concerned inasmuch as apparently both Facebook and Orkut have published the Rules and Regulations as also the privacy policy and user agreements for access and usage of their computer resource. Rule 3(2) contains certain other directions as to what should be the content of the Rules and Regulations, terms and conditions and the user agreements. For the present, though, we are focussing on Rule 3(4) which reads as under:-

?(4) The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes.?

By virtue of a subsequent clarificatory notification, it has been clarified that the intermediary shall respond to or acknowledge the complainant within thirty six hours and the same shall be redressed promptly but in any case within 30 days. From the above, Rule 3(4) as clarified, it is apparent that the intermediary can take action both on a complaint in writing from affected persons as well as on obtaining knowledge by itself. This is relevant in the context of the material which has been submitted by the learned counsel for the petitioner with regard to usage of the social networking sites by minor groups. Those have been made part of the papers in the present petition and will be

taken note of by the social networking sites and they shall take appropriate action as required under Rule 3(4) of the said Rules.

Mr Nigam, the learned senior counsel appearing on behalf of Google Inc., states that there was a complaint with regard to one search result, which was pointed out by the learned counsel for the petitioner. That has been addressed and removed.

The learned counsel for the petitioner has also drawn our attention to Rule 3(11) of the said Rules, which reads as under:-

?(11) The intermediary shall publish on its website the name of the Grievance Officer and his contact details as well as mechanism by which users or any victim who suffers as a result of access or usage of computer resource by any person in violation of rule 3 can notify their complaints against such access or usage of computer resource of the intermediary or other matters pertaining to the computer resources made available by it. The Grievance Officer shall redress the complaints within one month from the date of receipt of complaint.?

On going through the above, sub rule (11), we feel that it should be directed that intermediaries, including the social networking sites such as Facebook and Orkut, should immediately publish the names of the respective Grievance Officers on their websites alongwith contact numbers as well as the mechanism by which any user or any victim who suffers as a result of access or usage of computer resource by any person in violation of rule 3, can notify their complaints against such access or usage.

The same be complied with, if not already done, within two weeks.

Mr Rajeeve Mehra, the learned Additional Solicitor General appearing on behalf of the Union of India, states that the Union of India shall also take steps to ensure that the intermediaries comply with the requirement of Rule 3(11).

The learned counsel appearing for the petitioner has also raised certain issues with regard to the provisions of the Public Records Act, 1993. The learned Additional Solicitor General seeks sometime to examine the same before he makes his submissions in this regard.

Renotify on 26.09.2013.

Dasti under the signatures of the Court Master.

BADAR DURREZ AHMED, ACJ

VIBHU BAKHRU, J

AUGUST 23, 2013/MK

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