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

Date of Decision: 23rd July, 2024.

+ W.P.(C) 10030/2024, CM APPLs. 41028-41029/2024

SANCHIT GUPTA..... Petitioner

Through: Mr. Ankit Shah, Mr. Avneesh Kumar
Upadhyaya, Ms. Megha Tyagi,
Mr. Kriti Jain and Mr. Tarun Arora,
Advocates.

versus

UNION OF INDIA AND ANR..... Respondents

Through: Mr. Mukul Singh, CGSC with
Ms. Seema Singh, GP for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Mr. Sanchit Gupta, a professional with degrees in both Technology and Law, is engaged as an independent IT Consultant in the pharmaceutical sector. He has filed the present writ petition under Article 226 of the Constitution of India, 1950¹, against Respondent No. 2, X Corp. (formerly known as Twitter Inc.), following suspension of his social media account, alleging a breach of the principles of natural justice, equity and fairness.

FACTUAL BACKGROUND:

2. Mr. Gupta created an account on X platform with the username '@sanchit gs' and subsequently subscribed to various premium services offered by the Respondent, including the X Premium and X Premium Plus

¹ "the Constitution"

services. In August 2023, Mr. Gupta was informed *via* email by X Corp that he was eligible to receive a portion of the advertising revenue generated through his account. He began receiving payments as part of this revenue-sharing arrangement since September 2023 till his account was suspended. However, in June 2024, Mr. Gupta observed a reduction in the reach of his account and a stagnation in follower growth, raising concerns about potential shadow banning or other restrictive actions being applied to his account without his knowledge. The situation escalated on 15th July 2024, when Mr. Gupta received notification from X Corp that his account's monetization was paused due to suspension of his account, with no prior show cause notice, intimation or warning. This action by X Corp prompted Mr. Gupta to file multiple appeals to restore his account, none of which according to him have been acknowledged or resolved by the platform.

3. The Petition arrays two respondents: Respondent No. 1, the Union of India, represented herein through the Ministry of Communications and Information Technology, and Respondent No. 2, X Corp., previously known as Twitter, Inc - a social media platform and micro-blogging service that distributes short messages.

4. The grievance of the Petitioner is spelt out in the petition as follows:

d. Petitioner created his Account on the social media platform of Respondent No. 2 i.e., X Corp. (Formerly known as TWITTER INC.) with username '@sanchit_gs' in May 2021.

e. The Petitioner received an E-Mail on 12.08.2023 from the Respondent No. 2 that he was eligible to receive a portion of ads revenue generated by Respondent No. 2 on his account. Thereafter, he started receiving money as part of the monetization scheme of Respondent No. 2 from September 2023 regularly till the Account was suspended.

f. That the Petitioner had purchased X Premium Subscription from Respondent No. 2 on 18.01.2023 for the first time which was valid for one year. The Petitioner further renewed his X Premium Subscription from Respondent No. 2 which was valid for one year and paid \$89.04 on

18.01.2024. The Petitioner further upgraded to X Premium Plus by further paying \$69.53 to Respondent No. 2 on 08.04.2024.

g. The Petitioner noticed that his reach on his account had been limited and there was no increase in his number of followers in June 2024.

h. The Petitioner received an E-mail dated 15th July, 2024 from Respondent No. 2 that his monetization has been paused due to the suspension of his account. It is pertinent to mention here that no show cause, intimation or notice was given to the Petitioner regarding the suspension of his account, in clear violation of the principles of natural justice.

i. The Petitioner filed four appeals on 15.07.2024 for restoration of his account on the platform of Respondent No. 2 but the same has not been either acknowledged or resolved till the filing of this petition. The Petitioner filed another appeal for restoration of his account on the platform of respondent No. 2 but the same has not been either acknowledged or resolved till the filing of this petition.

j. Petitioner has suffered huge mental agony, loss of business and loss of reputation due to the illegal and arbitrary suspension of his Account by Respondent No. 2. The other members who are opposed to the ideology of the Petitioner on the platform of Respondent No. 2 have been making merry, abusing and humiliating the Petitioner on account of the suspension of the Petitioner's Account. The Petitioner is not able to respond to the online abuse by other members and is unable to defend himself due to the illegal and arbitrary suspension of his Account.

k) This Petition raises important questions regarding the nature, scope and applicability of fundamental rights under the Indian Constitution. Specifically, it raises the issue of whether large multinational corporations, discharging a public function by serving millions of users (and making a profit out of them), are amenable to constitutional scrutiny for their actions.

l. The suspension of the Petitioner's account is ex-facie and arbitrary as the Petitioner has not posted anything in violation of the policy of Respondent No. 2. It is humbly submitted that the suspension of the Petitioner's Account W.P.(C)-10030/2024 17 is illegal, arbitrary and contrary to the Respondent No.2's own policy.

m. The Petitioner is seeking also direction from this Hon'ble Court to Respondent No.2 to restore his Account '@sanchit_gs' on its platform which has been suspended without following due procedure and against the principles of natural justice.

n. That Respondent No. 2 performs a "Public Function" and is bound by section 79 of the Information Technology Act, 2000 as well as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021."

5. As can be noticed from the above, all these allegations, are targeted

towards Respondent No. 2.

6. Furthermore, the relevant grounds urged in the present petition are as follows:

- "B. The action of Respondent No. 2 further violates the freedom of speech and expression guaranteed under Article 19 (1) of the Indian Constitution, the Rights to assembly and association guaranteed under Articles 19 (1) (b) and 19 (1) (c) of the Constitution. It also violates the Articles 14 and 21 of the Indian Constitution.*
- C. The petitioner has suffered huge mental agony, loss of business and loss of reputation due to the illegal and arbitrary suspension of his Account by Respondent No. 2. The other members who are opposed to the ideology of the Petitioner on the platform of Respondent No. 2 have been making merry, abusing and humiliating the Petitioner on account of the suspension of the Petitioner's Account. The Petitioner is not able to respond to the online abuse by other members and is unable to defend himself due to the illegal and arbitrary suspension of his Account*
- D. This Petition raises important questions regarding the nature, scope and applicability of fundamental rights under the Indian Constitution. Specifically, it raises the issue of whether large multinational corporations, discharging a public function by serving millions of users (and making a profit out of them), are amenable to constitutional scrutiny for their actions.*
- E. The Writ Petition is maintainable against Respondent No. 2 as it discharges a public function. The suspension of the Petitioner's Account is illegal, arbitrary and contrary to Respondent No. 2's terms of use and rules. The suspension of the Petitioner's account violates his right to freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution and the Rights to assembly and association guaranteed under Articles 19 (1) (b) and 19 (1) (c) of the Constitution. There exists a positive obligation on Respondent No. 1 to ensure that rights guaranteed under the Constitution are not violated by private entities such as Respondent No. 2.*
- F. The Petitioner filed several appeals for restoration of his account on the platform of Respondent No. 2 but the same has not been either acknowledged or resolved till the filing of this petition.*

G. Respondent No. 2 performs a "Public Function" and is bound by section 79 of the Information Technology Act, 2000 as well as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021."

7. Thus, as can be seen from the pleadings, all allegations are against a private Respondent- X Corp. Nonetheless, the Petitioner has included the Union of India as a Respondent to anchor the writ petition within the constitutional framework. The involvement of the Union of India is premised on the assertion that it has the responsibility to ensure that constitutional rights are not infringed upon by private entities, especially those that play a significant role in public communication and discourse, such as X Corp. These assertions are spelt out as follows:

"The Writ Petition is maintainable against Respondent No. 2 as it discharges a public function. The suspension of the Petitioner's Account is illegal, arbitrary and contrary to Respondent No. 2's terms of use and rules. The suspension of the Petitioner's account violates his right to freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution and the Rights to assembly and association guaranteed under Articles 19 (1) (b) and 19 (1) (c) of the Constitution. There exists a positive obligation on Respondent No. 1 to ensure that rights guaranteed under the Constitution are not violated by private entities such as Respondent No. 2."

8. The Petitioner contends that Respondent No. 2, X Corp, is amenable to writ jurisdiction as it performs a 'public function' by facilitating public discourse through its social media platform.

9. The concept of a 'Public function' under Article 226 of the Constitution plays a crucial role in determining the maintainability of a writ petition against private entities or non-state actors. The Supreme Court has through various judgements held that a writ under Article 226 of Constitution is maintainable against any person or entity, including private

bodies, if they perform functions that can be considered ‘public functions’² The term ‘public function’ cannot be easily defined, but it is understood as functions similar to or closely related to functions that are traditionally part of governmental duties or performed by state in its sovereign capacity.³ This can include situations where the state has outsourced its functions to a private entity, or where the private entity performs a service that is so intertwined with state obligations that it becomes a necessary function for societal welfare. Thus, for a writ to be maintainable against a private entity under Article 226 of the Constitution, it must be demonstrated that the action or conduct of the entity must be in the performance of a public duty or function; the nature of the activity should involve a public interest or be linked to a state obligation; and the function performed by the entity should be integral to state functions or be undertaken by virtue of some power vested by law. The threshold for a private entity to be amenable to writ jurisdiction is that it must undertake functions that are fundamentally governmental in nature or are performed by virtue of power vested by law.

10. X Corp. provides a digital platform for communication and social interaction. It serves as a medium for public discourse, facilitating the exchange of information and ideas on a scale that is both vast and instantaneous. Importantly, it is a privately owned entity that operates without specific governmental delegation or statutory obligations to perform any public duty. While ‘X’ plays a critical role in information dissemination and influencing public opinion, its core function is to provide a platform for

² *Zee Telefilms Ltd v. Union of India* (2005) 4 SCC 649; See also: *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691

³ *G Bassi Reddy v International Crops Research Institute* (2003) 2 SCC 225 *Ramesh Alhuwalia v. State of Punjab* (2012) 12 SCC 331

expression—a service that has ‘public discourse’ as consequence, yet is private in operation. There is no directive, statutory or otherwise, from the government that delegates traditional state functions to ‘X’. The platform is not mandated to carry out public duties. ‘X’ is voluntary and user-driven, distinguishing it from entities that operate under a compulsion of law or provide services that are essential public utilities. The Supreme Court’s judgments involving non-state actors like private schools are illustrative. These entities have been considered amenable to writ jurisdiction under Article 226 when performing functions like education⁴ due to the public nature of these services and often due to specific regulatory frameworks governing their operations. In contrast, the function of ‘X’ as a communication platform, does not align with these precedents as it lacks statutory compulsion. Furthermore, the function or service of providing a platform for communication or social interaction cannot be called be a function similar to that of a governmental function or integral to state functions. Thus, it cannot be said that X Corp performs a public function or discharges a public duty.

11. In conclusion, despite its significant role in public discourse and the potential impact on public opinion and democratic engagement, ‘X’ does not perform a ‘public function’ in the strict legal sense intended under Article 226 of the Constitution. The platform operates as a private entity under private law and does not carry out any governmental duties or obligations. Therefore, it is not amenable to writ jurisdiction under Article 226 as

⁴ *St. Mary’s Education Society v. Rajendra Prasad Bhargava*, (2023) 4 SCC 498. See also: *Bharat Mata Saraswati Bal Mandir Senior Secondary School vs. Vinita Singh and Others* 2023 SCC OnLine Del 3934

currently interpreted by jurisprudence on this issue.

12. In the Court's opinion, Petitioner's legal recourse appears more appropriate for a claim breach of contract rather than a constitutional violation. The proper venue for addressing such a breach would be the civil courts, where contractual disputes are adjudicated. If the Petitioner believes that his rights under the policy of X Corp have been violated, pursuing this claim through civil litigation is advised, as the remedy for breach of contract lies therein. Thus, the writ petition challenging such actions on constitutional grounds is not maintainable.

13. As against, Respondents No. 1, the relief sought in the present petition is as follows:

“a. Issue a writ of Mandamus or any other appropriate writ(s), order(s), or direction(s) thereby directing Respondent No. 1 to strictly enforce the provisions of the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 on the Respondent No. 2.”

14. The Petitioner seeks to enforce the Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The essence of the relief is to compel regulatory oversight by the government to regulate the activities of digital entities like X Corp to protect public interests and uphold digital ethics. However, the issuance of a writ of mandamus requires a clear demonstration that there has been a neglect of statutory duty by Respondent No. 1. Mandamus is an extraordinary judicial remedy, utilized specifically to compel a public official or agency to perform a duty that they are legally obligated to perform and have failed to do. The petition must provide concrete evidence of this neglect, which, based on the details provided, is

not apparent. However, the facts and grounds noted above do not sufficiently indicate that Respondent No. 1 has failed in their regulatory duties or that there has been a disregard of legal obligations that would necessitate the intervention of this Court through a mandamus. Without this crucial demonstration of neglect or failure to act as mandated by law, the foundation necessary to support the issuance of a mandamus is lacking.

15. In light of the above, the present writ petition, in the opinion of the Court is not maintainable and is accordingly dismissed along with pending applications.

JULY 23, 2024

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LEGALS
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

SANJEEV NARULA, J