

ITEM NO.501

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.804/2017

(Arising out of impugned final judgment and order dated 23/09/2016 in WPC No. 7663/2016 passed by the High Court of Delhi at New Delhi)

KARMANYA SINGH SAREEN AND ANR

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS

Respondent(s)

(With appln. (s) for directions)
(For final disposal)

Date : 18/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Harish N. Salve, Sr. Adv.
Ms. Madhavi Divan, Adv.
Mr. T. Singh Dev, Adv.
Mr. Gaurav Sharma, AOR
Mr. Prabhas Bajaj, Adv.
Ms. Surbhi Mehta, Adv.
Mr. Tarun Verma, Adv.
Ms. Amandeep Kaur, Adv.

For Respondent(s) Mr. Mukul Rohatgi, AG
Mr. Tushar Mehta, ASG
Mr. P.S. Narasimha, ASG
Ms. Vibha Datta Makhija, Sr. Adv.
Mr. A.K. Sanghi, Sr. Adv.
Ms. Swarupama Chaturvedi, Adv.
Ms. Sadhana Sandhu, Adv.
Mr. Vijay Prakash Adv.
Mr. G.S. Makker, Adv.

For R-2, 3 & 4 Mr. Kapil Sibal, Sr. Adv.
 Mr. Sidharth Luthra, Sr. Adv.
 Mr. Tejas K., Adv.
 Mr. Akhil Anand, Adv.
 Mr. Vivek Reddy, Adv.
 Ms. Richa Srivastava, Adv.
 Mr. Shashank Mishra, Adv.
 Mr. Arpit Gupta, Adv.
 Mr. Koshi, Adv.
 Mr. S. S. Shroff, AOR

For R-5 Mr. Sanjay Kapur, AOR
 Mr. Anmol Chandan, Adv.
 Ms. Megha K., Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Harish N. Salve, learned senior counsel along with Ms. Madhavi Divan, learned counsel for the petitioners, Mr. Mukul Rohatgi, learned Attorney General, Mr. Tushar Mehta and Mr. P.S. Narasimha, learned Additional Solicitor General for the Union of India, Mr. Kapil Sibal, learned senior counsel for the respondent No.2, WhatsApp Inc., Mr. Sidharth Luthra, learned senior counsel for the respondent No.3, Facebook Inc., and Mr. Sanjay Kapur, learned counsel for the respondent No.5.

At the commencement of the hearing, after giving some introduction with regard to the functioning of the internet, Mr. Harish N. Salve, learned senior counsel appearing for the petitioners, drew our attention to the affidavit filed by the Telecom Regulatory Authority of India (TRAI), the respondent No.5 and the counter affidavit that has been filed by the Union of India, the respondent No.1. At this juncture, Mr. Mukul Rohatgi, learned Attorney General for India has submitted that the stand of the Union of India is that there is going to be a regulatory regime to save the data base to guide the concept of net-neutrality.

On being questioned, what are the real issues involved, before Mr. Salve, learned senior counsel for the petitioners could answer, Mr. Kapil Sibal, learned senior counsel appearing for the respondent No.2, which was immediately echoed by Mr. Sidharth Luthra, learned senior counsel appearing for the respondent No.3, submitted that the matter could not have been referred to the Constitution Bench without framing the questions that needed to be referred. The said preliminary objection was resisted by Mr. Salve on the foundation that the direction for listing the matter before a five-Judge Bench need not be treated as a reference as postulated under Article 145 of the Constitution of India. Learned senior counsel would urge that Hon'ble the Chief Justice of India is the master of the roster and he has the authority on the administrative side to place the matter before a five-Judge Bench regard being had to the gravity, significance and importance of the matter. We shall delve into this preliminary objection at the time of delivery of the final verdict. When an issue is raised, the same has to be addressed and we think we shall put the controversy to the rest in this regard.

In the course of hearing, Mr. Salve has taken pains to take us through certain documents and attacked the clauses which have come in vogue, as to how they are going to affect the freedom of an individual. According to Mr. Salve, the policy that is formulated by WhatsApp is unconscionable and is unacceptable and also suffers from constitutional vulnerability since it *maladroitedly* affects the freedom which is a cherished right of an individual under the Constitution. Learned senior counsel would contend that by imposition, the WhatsApp cannot formulate such a policy under the garb of data sharing.

Mr. Sibal vehemently resisting the submission of Mr. Salve, would contend that WhatsApp does not share data protection of voice and messages, so no part of the content which is exchanged between two individuals is ever revealed to third party and, therefore, the submission of Mr. Salve is *sans* substance. That apart, it is submitted Mr. Sibal and Mr. Luthra that their action is compliant with Section 79 of the Information Technology Act, 2000. It has also been contended by them that the actions of the respondent Nos.2 and 3 are in consonance with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. Be that as it may, we would like Mr. Salve to formulate his propositions and file it by 24th April, 2017.

Let the matter be listed at 3 p.m. on 27th April, 2017.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master