

Supreme Court of India

Foundation For Media ... vs Union Territory Of Jammu And ... on 11 May, 2020

Author: N.V. Ramana

Bench: R S Reddy, N Ramana

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) . OF 2020
(D. No. 10817 OF 2020)

FOUNDATION FOR MEDIA
PROFESSIONALS

PETITIONER

Versus

UNION TERRITORY OF JAMMU

RESPONDENTS

AND KASHMIR & ANR.

AND

WRIT PETITION (CIVIL) . OF 2020
(D. No. 10875 OF 2020)

SOAYIB QURESHI

PETITIONER

Versus

UNION TERRITORY OF JAMMU
AND KASHMIR

RESPONDENT

AND

WRIT PETITION (CIVIL) . OF 2020
(D. No. 10904 OF 2020)

PRIVATE SCHOOLS ASSOCIATION
J AND K

PETITIONER

Versus

Signature Not Verified

Digitally signed by

THE UNION TERRITORY OF JAMMU

RESPONDENT

GEETA AHUJA

Date: 2020.05.11

13:07:37 IST

Reason:

AND KASHMIR

O R D E R

1. Again, this Court is called upon to address a very important but a sensitive issue on national security and human rights, wherein we have to ensure that national security and human rights can be reasonably and defensibly balanced, a responsibility, that this Court takes with utmost seriousness.

2. This Court, vide its earlier judgment dated 10.01.2020 in Anuradha Bhasin v. Union of India, (2020) SCC Online SC 25, gave certain directions regarding the imposition of restrictions on the internet in a proportionate manner. The aforesaid case had, in addition to the procedural rules, supplemented the requirements of having timely review and the non-permanence of internet shutdown orders.

3. The three Petitioners before us are aggrieved by the fact that Respondent No. 1 has restricted the mobile internet speed to 2G and have approached this Court seeking 4G mobile internet, and the quashing of the impugned orders restricting internet in the Union Territory of Jammu and Kashmir.

4. Broadly, the argument of the Petitioners is premised on the ground that in the existing COVID-19 situation, when there is a national lockdown, the restrictions imposed on the residents of the entire Union Territory of Jammu and Kashmir impacts their right to health, right to education, right to business and right to freedom of speech and expression.

5. They submit that access to internet acquires even more importance under the prevailing circumstances in the country, relating to the pandemic. The Petitioners contended that the fulfillment of the right to health is dependent on the availability of effective and speedy internet in order to access medical services and information on containment strategies. The denial of such critical information not only violates the peoples right to receive information, but is also a denial of their right to health. Furthermore, the Petitioners contend that restrictions on internet speed directly impacts the students of Jammu and Kashmir to exercise their right to education as they are unable to access to e-learning services such as online video classes, and other online educational content. This not only impacts their continuing education, but also disadvantages the students of Jammu and Kashmir who are preparing for national/competitive exams. Petitioner in W.P. (C) D. No. 10817 of 2020, has appended the affidavits of a journalist who collected testimonies of doctors, teachers, students, journalists, lawyers and business persons from the Union Territory, and of a technical expert narrating importance of 4G internet, to support the above submissions.

6. Moreover, the Petitioners have argued that the actions of Respondent No. 1 are violative of the directions laid down by this Court in Anuradha Bhasin (supra) as well as the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 [Telecom Suspension Rules] as

no Review Committee has been constituted by the Respondent No. 1. Further, the blanket orders passed by Respondent No. 1, indicates non-application of mind. Lastly, Respondent No. 1 has failed to provide any rational nexus between the restriction of the internet speed and national security. The Petitioners submitted that since the introduction of internet in the Union Territory of Jammu and Kashmir, the number of incidents relating to terrorism in the region have actually reduced. Lastly, the Petitioners pleaded in the alternative that if the Respondents apprehend the misuse of data services, then they could consider restricting the internet only in certain problematic areas or providing 3G/4G internet to certain regions on a trial basis.

7. The learned Attorney General preliminarily contended that Courts should not step into issues of national security which are best left to those in charge of policy making [refer to *Zamora, (1916) 2 AC 77 (PC)*]. Further, the learned Attorney General relying on some judicial pronouncements submitted that the claims of fundamental rights have to be examined against the larger public interest of protecting the security of the State, wherein, while balancing the aforesaid conflicting rights, the security of the nation should triumph against the fundamental rights of the citizens. Moreover, in the prevailing circumstances wherein there is continuing insurgency in the region, the spreading of fake news to incite violence, etc., it would not be possible to provide full internet services to the region.

8. Learned Solicitor General vehemently opposed the petitions and argued that the authorities have strictly complied with the directions passed by this Court on the previous occasion, and that the relevant authorities are cognizant of not only the changing circumstances but also the ground realities. The information regarding COVID-19 available on various social media platforms, government websites, applications developed by Respondent No. 2 for disseminating information can be easily downloaded over the 2G internet. Moreover, no restrictions exist over fixed line internet. Advisories and documents relating to COVID-19 have already been accessed by over 1 lakh health professionals in the Union Territory of Jammu and Kashmir through fixed line internet. Further, to ensure effective access to right to health, the Respondent No. 2 is broadcasting information through various radio channels and through satellite TV and local cable networks. 1.6 lakh pamphlets and 90,000 posters in English, Urdu and Hindi are being disseminated to the public. Wide publicity is also being given to various helpline numbers which have been established for COVID-19 related queries through print and electronic media. With respect to the right to education of the students of Jammu and Kashmir, lessons are being delivered on 16 DD channels at a national level, and through the radio. The department has also undertaken the distribution and delivery of textbooks, upto elementary level, to the eligible students at their homes.

9. The learned Solicitor General also highlighted the fact that over 108 terrorist incidents have taken place in the recent past, between August 05, 2019 to April 25, 2020 in the Union Territory of Jammu and Kashmir. In view of the aforesaid fact, the learned Solicitor General submitted that the current situation in the Union Territory of Jammu and Kashmir is very grave and volatile, even referring to the recent terrorist activity in Kupwara District. The learned Solicitor General therefore submitted that the authorities have calibrated the restrictions based on the requirement so as to reduce the misuse of internet and that the measures adopted by the authorities are reasonable. He therefore prayed that the present petitions ought to be dismissed.

10. Before parting with the submissions of the parties, it may be stated that Respondent No. 1 submitted an additional note dated May 06, 2020, after the hearing of the matter was concluded, wherein recent terrorist activities in the region, and the interest shown by the Pakistani military regarding the political developments in Kashmir, were highlighted. Petitioners in W.P. (C) D. No. 10817 of 2020 and W.P. (C) D. No. 10875 of 2020 filed responses to the same on May 07, 2020 and May 06, 2020 respectively. Although the Petitioners have objected to the note filed by the Respondent No. 1, taking into consideration the far-reaching consequences of the issues involved herein, we have considered the submissions of both parties.

11. Heard both the parties, and perused the documents placed before us.

12. At the outset, we have already laid down that the fundamental rights of citizens need to be balanced with national security concerns, when the situation so demands. This Court is cognizant of the importance of these matters for the national security concerns, and takes the same with utmost seriousness to ensure that citizens enjoy life and liberty to the greatest possible extent. National security concerns and human rights must be reasonably and defensibly adjusted with one another, in line with the constitutional principles. There is no doubt that the present situation calls for a delicate balancing, looking to the peculiar circumstances prevailing in the Union Territory of Jammu and Kashmir. Before considering the relief sought by the Petitioners, it is necessary to look at the steps taken by Respondent No. 1 after the pronouncement of the earlier judgment of this Court in Anuradha Bhasin (supra). For, convenience, the table below indicates the orders which have been passed since 10.01.2020 (post Anuradha Bhasin (supra) judgment):

| ORDER | IMPLICATION |
|--------------------------------------|--|
| Home-03 (TSTS) of 2020 14.01.2020 | For Kashmir, fixed line connectivity to institutions managing essential services like hospitals, after installation of firewalls and whitelisting. |

2G mobile internet to postpaid users to access whitelisted sites in Jammu, Samba, Kathua, Udhampur and Reasi.

No social media or VPNs.

Number of whitelisted sites: Not mentioned Home-04 (TSTS) of Fixed line connectivity to also be provided to 2020 IT/software companies.

18.01.2020 2G mobile internet for postpaid users in all districts of Jammu and Kupwara and Bandipora in Kashmir for accessing white listed sites.

Prepaid connections will be provided mobile internet only after verification by TSPs as per applicable norms Home-05 (TSTS) of Fixed line connectivity with MAC binding.

2020 Access only to whitelisted sites.

24.01.2020 2G mobile internet restored in all districts of J&K for postpaid and verified prepaid customers but only whitelisted sites can be accessed.

Home-08 (TSTS) of 2020
31.01.2020

No social media or VPNs
Restrictions mentioned in the Order dated 24.01.2020 will continue.

Number of whitelisted sites: 329

Home- 09 (TSTS) of 2020
07.02.2020

Restrictions mentioned in Order dated 31.01.2020 will continue.

Number of whitelisted sites: 481

Home-13 (TSTS) of 2020
15.02.2020

Fixed Line connectivity with MAC binding.
Access only to whitelisted sites.

2G mobile internet for postpaid and verified prepaid customers but only whitelisted sites can be accessed.

No social media or VPNs.

Home-16 (TSTS) of 2020
24.02.2020

Restrictions in Order dated 15.02.2020 will continue to apply.

Number of whitelisted sites: 1674

Home-17 (TSTS) of 2020
04.03.2020

2G mobile internet for postpaid and verified prepaid customers and access allowed to all websites.

Fixed line connectivity with MAC binding to access all sites.

Home-20 (TSTS) of 2020
17.03.2020

Restrictions in Order dated 04.03.2020 will continue to apply.

Home-21 (TSTS) of 2020
26.03.2020

2G mobile internet for postpaid & verified prepaid customers to access all websites.

Fixed line connectivity with MAC binding to access all sites Home-22 (TSTS) of Restrictions in Order dated 26.03.2020 will 2020 continue to apply.

03.04.2020

Home-28 (TSTS) of 2020
15.04.2020

2G mobile internet for postpaid customers & verified prepaid customers to access all websites.

Fixed line connectivity with MAC binding to access all websites without any speed restrictions.

Home-34 (TSTS) of 2020 27.04.2020 2G mobile internet for postpaid customers & verified prepaid customers to access all websites.

Fixed line connectivity with mac binding to access all websites without any speed restrictions.

13. The above measures taken by the Respondent No. 1 have to be seen in light of the circumstances already highlighted by the learned Solicitor General regarding the existing law and order and national security situations in the Union Territory, and the occurrence of incidents that affect the integrity of the nation. The learned Solicitor General stated that since 05.08.2019, around 108 terrorist related incidents have taken place in Union Territory of Jammu and Kashmir, wherein 99 incidents were reported from the Kashmir province and 09 from Jammu province. In total, 30 civilians have lost their lives and 114 civilians have been injured. Further, more than 20 security personnel have been martyred and 54 security personnel have been injured. Moreover, 76 terrorists have been gunned down. These facts have not been rebutted by the Petitioners. This Court will have to consider the above in its analysis. It may be important to note that after this matter was reserved for orders, the Union Territory of Jammu and Kashmir has filed another note, indicating that the militancy has significantly increased in the recent times, in the following manner:

| DATE | INCIDENT | DISTRICT | CONSEQUENCE |
|------------|--|----------|--|
| 26.04.2020 | Encounter at Gudder Kulgam | Kulgam | 01 person died |
| 27.04.2020 | Encounter at Lower Munda Qazigund Kulgam | Kulgam | 03 terrorists killed 02 security force personnel injured |
| 28.04.2020 | Encounter at Melhoora Zainpora | Shopian | 03 terrorists killed 02 security personnel injured 01 civilian injured |
| 29.04.2020 | Grenade attack on police deployment at Nowhatta Srinagar | Srinagar | 04 CISF personnel injured 01 police personnel injured |
| 02.05.2020 | Encounter at Dangarpora | Pulwama | 02 terrorists killed |
| 02.05.2020 | Encounter at Najar Mohalla Chanjimulla Handwara | Kupwara | 02 terrorists killed 04 army personnel killed including two senior officers 01 Police SI killed 01 SF personnel |

| | | |
|------------|---|--|
| | | injured |
| 02.05.2020 | Grenade attack upon CRPF at Tahab Pulwama | Pulwama No damage caused |
| 03.05.2020 | Grenade attack upon SFs at Nowshera Srinagar | No damage caused |
| 04.05.2020 | Firing attack on CRPF at Wangam Karlgund Handwara crossing | 03 CRPF personnel killed 01 Civilian killed 01 CRPF personnel injured |
| 04.05.2020 | Grenade attack upon CISF Bunker at Grid Station Wagoora Nowgam Srinagar | 01 CISF personnel injured |
| 05.05.2020 | Grenade attack on police deployment at Pakharpora Budgam | 01 CRPF personnel injured 01 Police personnel injured 04 civilians injured |

Respondent No. 1 has also pointed to certain material, which indicate that cyber terrorism, is on the rise within the valley. The Respondent No. 1, has brought to the notice of this Court that the Pakistani Military in its Green Book 2020 has called for an information warfare on Kashmir, after the revocation of special status of Jammu and Kashmir.

14. While it might be desirable and convenient to have better internet in the present circumstances, wherein there is a worldwide pandemic and a national lockdown. However, the fact that outside forces are trying to infiltrate the borders and destabilize the integrity of the nation, as well as cause incidents resulting in the death of innocent citizens and security forces every day cannot be ignored.

15. However, the authorities in the Union Territories of Jammu and Kashmir have selected the 2G speed to restrict the flow of information in order to prevent misuse of data by terrorists and their supporters to disturb the peace and tranquility of the Union Territory of Jammu and Kashmir.

16. In any case, we may note that the common thread in the impugned orders is that they have been passed for the entire Union Territory of Jammu and Kashmir. In this regard, our observations in the Anuradha Bhasin (supra) may be of some relevance:

The degree of restriction and the scope of the same, both territorially and temporally, must stand in relation to what is actually necessary to combat an emergent situation. Although the present orders indicate that they have been passed for a limited period of time, the order does not provide any reasons to reflect that all the districts of the

Union Territory of Jammu and Kashmir require the imposition of such restrictions. At the same time, we do recognize that the Union Territory of Jammu and Kashmir has been plagued with militancy, which is required to be taken into consideration. These competing considerations needs to calibrated in terms of our judgment in Anuradha Bhasin (supra).

17. One of the criteria for testing the proportionality of the orders is the territorial extent of the restrictions. In view of the observations made in Anuradha Bhasin (supra), for meaningful enforcement of the spirit of the judgment, inter alia, the authorities are required to pass orders with respect to only those areas, where there is absolute necessity of such restrictions to be imposed, after satisfying the directions passed earlier.

18. In this regard, our attention is drawn to the fact that blanket orders have been passed for the entire territory rather than for specific affected areas.

19. A perusal of the submissions made before us and the material placed on record indicate that the submissions of the Petitioners, in normal circumstances, merit consideration. However, the compelling circumstances of cross border terrorism in the Union Territory of Jammu and Kashmir, at present, cannot be ignored.

20. Additionally, although the Petitioners have argued that the orders passed by Respondent No. 1 reveals non-application of mind, however, at the cost of repetition, it must be noted that the authorities have been taking steps towards easing of internet restrictions taking into account the prevailing circumstances. This can be seen from the fact that initially only whitelisted websites were allowed, before internet access to all websites was provided on broadband, and finally to postpaid and verified prepaid mobile users as well, although at 2G speeds. Further, the various steps taken by Respondent No. 1 with respect to ensuring the fundamental rights of the people, in relation to the existing COVID-19 pandemic, must also be taken into account.

21. During the course of the arguments, the Respondent No. 2 Union of India has submitted that continuous infiltration, foreign influence, violent extremism and issues of national integrity are prevalent in the Union Territory of Jammu and Kashmir, which are serious issues.

22. In Anuradha Bhasin (supra), this Court has alluded to the fact that modern terrorism is being propagated through the internet and by using technology in the following manner:

39. Modern terrorism heavily relies on the internet. Operations on the internet do not require substantial expenditure and are not traceable easily. The internet is being used to support fallacious proxy wars by raising money, recruiting and spreading propaganda/ideologies. The prevalence of the internet provides an easy inroad to young impressionable minds.

23. At the same time, the Court is also cognizant of the concerns relating to the ongoing pandemic and the hardships that may be faced by the citizens. It may be noted that in the earlier judgment of

Anuradha Bhasin (supra) this Court had directed that, under the usual course, every order passed under Rule 2(2) of the Telecom Suspension Rules restricting the internet is to be placed before a Review Committee which provides for adequate procedural and substantive safeguards to ensure that the imposed restrictions are narrowly tailored. However, we are of the view that since the issues involved affect the State, and the nation, the Review Committee which consists of only State level officers, may not be in a position to satisfactorily address all the issues raised. We, therefore, find it appropriate to constitute a Special Committee comprising of the following Secretaries at national, as well as State, level to look into the prevailing circumstances and immediately determine the necessity of the continuation of the restrictions in the Union Territory of Jammu and Kashmir:

- a. The Secretary, Ministry of Home Affairs (Home Secretary), Government of India.
- b. The Secretary, Department of Communications, Ministry of Communications, Government of India.
- c. The Chief Secretary, Union Territory of Jammu and Kashmir The aforesaid Special Committee shall be headed by the Secretary, Ministry of Home Affairs (Home Secretary), Government of India.

24. The Special Committee is directed to examine the contentions of, and the material placed herein by, the Petitioners as well as the Respondents. The aforesaid Committee must also examine the appropriateness of the alternatives suggested by the Petitioners, regarding limiting the restrictions to those areas where it is necessary and the allowing of faster internet (3G or 4G) on a trial basis over certain geographical areas and advise the Respondent No. 1 regarding the same, in terms of our earlier directions.

25. The writ petitions are disposed of in the aforestated terms. Pending applications, if any, shall also stand disposed of. The Registry is directed to communicate this order, along with a copy of the paperbooks of the present petitions, to the aforesaid Special Committee.

.....J.

(N.V. RAMANA)J.

(R. SUBHASH REDDY)J.

(B.R. GAVAI) NEW DELHI;

MAY 11, 2020.