2025 INSC 656

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5391 OF 2025

WIKIMEDIA FOUNDATION INC. **APPELLANT(S)**

VERSUS

ANI MEDIA PRIVATE LIMITED & ORS. **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave is directed against the order dated 16.10.2024 passed by the Division Bench of the High Court of Delhi ('High Court' hereinafter) in FAO (OS) No.146 of 2024 (*Wikimedia Foundation Inc. Vs. ANI Media Private Limited and Ors.).*

2. Order dated 16.10.2024 of the Division Bench of the High Court reads as under:

> 1. On the last date of hearing, learned counsel for respondent No. l had drawn this Court's attention to a page published on the website 'Wikipedia 'wherein the impugned order passed by the learned Single Judge in CS(OS)524/2024 was adversely commented upon. It was stated in the said publication that the impugned order passed by the learned Single Judge to release the identities of the editors who made the edits amounted to 'censorship *and a threat to the flow of information'.*
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> 2. This Court is of the *prima facie* view that the aforesaid comment on the impugned order passed by the learned Single Judge amounts to interference in Court proceedings, and that too, on a website managed by Wikimedia Foundation Inc. who is a defendant in the suit. The subjudice principle, *prima facie*, seems to have been 'violated with impunity' by Wikimedia Foundation Inc. - the appellant herein.
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> 3. This Court is also informed by the learned counsel for respondent No. l that after the last hearing, the observations made by this Bench have been 'opened up for discussion' on Wikimedia Foundation Inc. website which, according to us, complicates and compounds the issue at hand.

> 4. At this stage, Mr. Akhil Sibal, learned senior counsel for the appellant, on instructions, states that neither the pages wherein the impugned order passed by the learned Single Judge have been commented upon nor the pages on which the discussion *qua* the observations made by the Division Bench have been created by the Wikimedia Foundation Inc. He further states that, in the event this Court were to direct to take down of the offending pages and discussions, the said order would be complied with.
>
> 5. Since this Court is of the *prima facie* view that the aforesaid comments on the impugned order passed by the learned Single Judge and the discussion on the observations made by this Bench amount to interference in court proceedings and violation of the subjudice principle by a party to the proceeding and borders on contempt, this Court directs Wikimedia Foundation Inc.- the appellant herein to take down/delete the said pages and discussion with regard to the observations made by this Court within thirty six (36) hours. List on 21st October, 2024.

3. When the related special leave petition was moved on 17.03.2025, this Court while issuing notice to the first respondent (ANI Media Private Limited) observed as follows:

> We are concerned with the legality and validity of the directions issued by the High Court in paragraph 5 of the impugned order.

4. Therefore, in this appeal we are not concerned with the *inter se* merit of the case between the parties. We are primarily concerned with the legality and propriety of the direction of the High Court to the appellant to take down/delete the pages and discussion with regard to the observations made by the High Court. That is the width and scope of this appeal.

5. However to put the matter in proper perspective, background facts may be briefly noted.

6. Respondent has instituted a suit before the High Court against the appellant and others being CS (OS) No. 524/2024 (appellant is defendant No. 1 in the suit). Following are the reliefs claimed in the suit:

> In view of the above, it is prayed that this Hon'ble Court may be pleased to:
>
> a. Pass an order against the defendants, restraining them from posting, publishing, uploading, writing, speaking, distributing and/ or republishing

any false, misleading and defamatory content against the plaintiff on any platform, including the platform maintained by defendant No. 1;

b. Pass an injunction against the defendant No. 1 or its agents or any person acting on its behalf or under its authority, directing it to remove all false, misleading and defamatory content against the plaintiff available on its platform, which can tarnish the reputation of the plaintiff and further restrain its users and administrators from publishing anything defamatory against the plaintiff on its platform;

7. On 20.08.2024, a learned Single Judge of the High Court passed the following order:

10. The learned counsel for the plaintiff submits that defendant Nos. 2 to 4 are claimed to be the 'Administrators' of defendant No. l.

11. Learned senior counsel for defendant No. l submits that they have no connection with defendant Nos. 2 to 4.

12. Keeping in view the above submissions, defendant No. l is directed to disclose the subscriber details of defendant Nos.2 to 4 to the plaintiff, through its counsel, within a period of two weeks from today. On receipt of the said information, the plaintiff shall take steps for

ensuring service of summons and notice on the application on the said defendants.

8. Respondent filed an application under Order XXXIX Rule 2A, Order X Rule 2 and Order XI read with Section 151 of the Code of Civil Procedure, 1908 ('Civil Procedure Code' hereinafter) in the suit seeking initiation of contempt proceedings against the appellant for alleged willful disobedience to the aforesaid order dated 20.08.2024. The same has been registered as I.A. No. 38498 of 2024.

9. On 17.09.2024, an opinion piece was published in the Indian Express (E-edition) titled *why the case against Wikipedia in India is a challenge to freedom of speech and information*. It was also hosted in the platform of the appellant.

10. In the piece it was mentioned that while issuing contempt notice, the learned Single Judge had reportedly said: *If you don't like India, please don't work in India: we will ask the Government to block your site.* Observing that there could be a failure to understand the nature of the medium i.e. Wikipedia, it was commented upon that the court's decision to

hold some members accountable and punish a community of volunteers by disclosing their private information seems to be a challenge to freedom of speech and information. The effect this would produce is that any form of critical information that a powerful organization does not like can be censored or become grounds for punishment which would set a wrong precedent.

11. Be that as it may, aggrieved by the order dated 20.08.2024 of the learned Single Judge, appellant preferred an appeal before the Division Bench of the High Court under Section 104 of the Civil Procedure Code read with Order XLIII Rule 1(r) of the said Code for setting aside of the aforesaid order.

12. On 10.10.2024 a video was posted by news agency Medianama about the case. In this video again reference was made to the learned Judge's warning to the appellant and discussed as to how the court's decision can impact safe harbor protection and information flow in India; it can stifle the flow of information and knowledge, it being a form of

censorship. In the ultimate analysis, it is the people who would suffer because of restrictions on knowledge and information flow.

13. It appears that when the appeal was listed before the Division Bench on 14.10.2024, respondent complained that publishing of such a page on the platform of the appellant was intended to pressurize the learned Single Judge. When appellant sought for time to seek instructions the court directed the matter to be listed for hearing on 16.10.2024.

14. On 14.10.2024, a talk page was hosted on the appellant's platform opening up discussions on the ongoing proceedings between the parties before the High Court. Be that as it may, on 16.10.2024, the impugned order was passed which we have extracted above. In the impugned order reference has also been made to the discussion page at paragraph 3.

15. Learned senior counsel for the appellant submits that the Division Bench is palpably in error in holding that a *prima facie* case of interference in court proceeding, violation

of the subjudice principle by a party to the proceeding and bordering on contempt was made out. He submits that High Court failed to consider that appellant is merely an intermediary having the limited role of providing technical infrastructure to host the platform and does not edit, update, maintain or monitor the contents on the platform. This was applicable to the talk page as well as to the video. Appellant, not being the author, cannot be said to have violated the sub judice principle merely because the two pages were hosted on its platform. In any case, what were being hosted were secondary source material.

15.1. Insofar the subjudice principle is concerned, learned senior counsel has referred to a Constitution Bench decision of this Court in *Sahara India Real Estate Corporation Limited Vs. Securities and Exchange Board of India* [1] and submits that the aforesaid decision provides for an order for postponement of publication in the event of violation of the

[1] (2012) 10 SCC 603

subjudice principle but for determining such violation, the Constitution Bench set out the following criteria:

> 1. There is a real and substantial risk of prejudice to fairness of the trial or to the proper administration of justice;
> 2. Reasonable alternative methods will not prevent the risk to fairness of the trial.

15.2. He submits that there is no discussion at all by the Division Bench as to how the pages hosted on the platform of the appellant constitute a real and substantial risk of prejudice to the pending proceedings before the learned Single Judge. The impugned order is devoid of any reason.

15.3. He further submits that the direction to take down the said pages is an unreasoned, unwarranted one and in violation of the right to open justice guaranteed under Article 21 of the Constitution of India. Further, it impinges upon the freedom of speech and expression, a guaranteed right under Article 19(1)(a).

15.4. Learned senior counsel submits that the view taken by the Division Bench that the contents of the pages hosted on

the appellant's platform borders on contempt is wholly unjustified. While observing so, the Division Bench failed to consider that the said pages were derived from other published secondary sources. Those were publicly available.

15.5. Finally, learned senior counsel submits that passing of orders like the impugned one would have a chilling effect not only on free speech but also on the right to know. It would impinge upon the right to freely access and use the medium of internet.

15.6. He, therefore, submits that in any view of the matter the impugned order cannot be sustained and is liable to be set aside.

16. *Per contra*, learned counsel for the respondent vehemently argued that the impugned order is only in the nature of an interim order. Appeal is pending as well as the suit. Therefore, this Court should not entertain the appeal.

16.1. He further submits that such airing of adverse comments, that too on the platform of a party to the suit,

certainly amounts to interference in court proceedings. Therefore, the Division Bench was justified in directing the appellant to take down/delete the offending pages. No interference is called for.

17. Submissions made by learned counsel for the parties have received the due consideration of the Court.

18. At the outset, it would be appropriate to advert to the two pages which are the subject matter of the present proceeding. The page hosted on the platform of the appellant titled “Asian News International vs. Wikimedia Foundation (article page) along with the discussions concerning the article page hosted on its corresponding "talk page" (talk page) (collectively hereinafter referred to as ‘impugned page’) contain the details regarding the defamation case filed by respondent No. 1 against the appellant and some comments allegedly made by the learned Single Judge of the High Court in the case.

19. There was also a talk page hosted on the appellant’s platform on 14.10.2024, where discussions were held on the

ongoing proceedings between the parties before the High Court which was noticed by the Division Bench in paragraph 3 of the impugned order. Division Bench of the High Court in paragraph 5 of the impugned order opined that the comments and discussion on the observations made by the Bench amounts to interference in court proceedings and violation of the subjudice principle by a party to the proceeding and borders on contempt. It therefore directed the appellant to take down/delete the said pages and discussion within thirty-six (36) hours.

20. As noticed above, while directing the appellant to take down/delete the concerned pages and discussion, the Division Bench was of the *prima facie* view that those amounted to interference in court proceedings, violation of the subjudice principle by a party to the proceeding and borders on contempt.

21. Let us deal with the above grounds.

22. In *Reliance Petrochemicals Limited Vs. Proprietors of Indian Express Newspapers* [2] , respondent had published articles containing adverse remarks on the issue of debentures by the appellant while the matter was subjudiced before this Court. When this was complained of by the appellant who sought initiation of contempt proceedings against the respondent, this Court granted an injunction against the said publication. At a later stage, this Court considered the question as to whether there was need for continuance of the order of injunction. It was in that backdrop that this Court formulated the principle of preventive injunction. It has been held that preventive injunction against the press can be granted only if reasonable grounds for keeping the administration of justice unimpaired necessitate so. This Court accepted the test of present and imminent danger on the basis of balance of convenience and clarified that it would be justified to grant preventive injunction against the press only if the danger apprehended is real and imminent.

[2] (1988) 4 SCC 592

22.1. In the facts of that case, this Court reiterated that continuance of the injunction would amount to interference with the freedom of press in the form of preventive injunction. People at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country like ours aspire in the broader horizon of the right to live in this age under Article 21 of our Constitution. This right has reached new dimension and urgency.

23. A Constitution Bench of this Court in *Sahara India Real Estate Corporation Limited* (supra) considered a gamut of issues to find an acceptable constitutional balance between freedom of the press and administration of justice; as to when publishing matters relating to cases which are sub-judice interferes with or obstructs or tends to obstruct with the due course of justice. In that case, appellant was directed by the respondent to refund amounts invested with the appellant in certain optionally fully convertible bonds with interest. This came to be challenged by the appellant. This Court had issued

notice to the respondent. While putting the appellant to notice as to how it intended to secure the liabilities incurred by them to the optionally fully convertible bond holders during the pendency of the civil appeals, it was directed to file an affidavit together with a valuation certificate indicating fair market value of the assets proposed to be offered as security. Pursuant thereto, appellant filed an affidavit before this Court explaining the manner in which it proposed to secure its liability. While the matter was subjudiced, this Court communicated to the parties that they should try to reach a consensus with respect to an acceptable security in the form of an unencumbered asset. Learned counsel for the appellant addressed a letter to the learned counsel for the respondent enclosing the proposal with details of security to secure repayment to the bond holders as a pre-condition for stay during the pendency of the appeals. There were also correspondences between the respective Advocates-on-Record. A day prior to the hearing, one of the news channel flashed on television the details of the said proposal which was a

confidential communication, obviously not meant for public circulation. The television channel concerned also named the valuer who had done the valuation of assets proposed to be offered as security. There was no information forthcoming from the respondent either of acceptance or rejection of the proposal. In the hearing it was complained on behalf of the appellant that disclosure of such details to the media by the respondent was in breach of confidentiality which was of course denied by the learned counsel for the respondent. It was in that context that this Court rendered its decision in *Sahara India Real Estate Corporation Limited* (supra).

23.1. This Court examined the interplay between the constitutional safeguard of free speech on the one hand and the doctrine of prior restraint on the other hand. It was observed that Supreme Court is not only the sentinel of the fundamental rights but is also a balancing wheel between the rights, subject to social control. Freedom of expression is one of the most cherished values of a free democratic society. Freedom of the press which is a facet of freedom of expression

includes the right to receive information and ideas of all kinds from different sources. In essence, freedom of expression embodies the right to know. After noticing the development of law on the issue of prior restraint, this Court observed that while open justice is the corner stone of our judicial system as it instills faith in the judicial and legal system, it is not absolute. It can be restricted by the court in its inherent jurisdiction as done in the case of *Naresh Shridhar Mirajkar Vs. State of Mahrashtra*[3] wherein this Court upheld the decision of the High Court directing that deposition of the defence witnesses should not be reported in the newspapers. An order of a court passed to protect the interest and administration of justice cannot be treated as violative of Article 19(1)(a). This Court held that there is power in the courts to postpone reporting of judicial proceedings in the interest of administration of justice but burden lies on the applicant to demonstrate substantial risk of prejudice to the pending trial which would therefore justify postponement of offending publication.

[3] AIR 1967 SC 1

23.2. This Court posed the question as to whether a postponement order constitutes a restriction on Article 19(1)(a) and whether such restriction is saved under Article 19(2). Answering the above question, this Court observed that a postponement order is actually a balancing measure. It seeks to balance the right to free speech as well as the right to information on the one hand and the presumption of innocence of the accused on the other hand. However, this Court cautioned that given that postponement orders curtail the freedom of expression of third parties, such orders have to be passed only in cases in which there is real and substantial risk of prejudice to fairness of the trial or to the proper administration of justice. Therefore, such orders of postponement should be ordered for a limited duration and without disturbing the content of the publication. It should be passed only when necessary to prevent real and substantial risk to the fairness of the court proceedings. The order of postponement will only be appropriate in cases where the balancing test otherwise favours non-publication for a limited

period. If a High Court or the Supreme Court, being courts of record, pass postponement orders under their inherent jurisdiction, such orders would fall within 'reasonable restrictions' under Article 19(2).

23.3. This Court concluded that a postponement order is a neutralizing device evolved by the courts to balance interests of equal weightage viz freedom of expression *vis-a-vis* freedom of trial. However, this Court observed that keeping in mind the important role of the media, such a postponement order should be subject to the twin tests of necessity and proportionality to be applied only in cases where there is real and substantial risk of prejudice to the proper administration of justice or to the fairness of the trial. However, it would be open to the media to challenge such an order in appropriate proceedings. A postponement order is not a punitive measure but is a preventive measure.

24. A three-Judge Bench of this Court was considering the issue of live streaming of court proceedings in *Swapnil*

Tripathi Vs. Supreme Court of India[4]. The Bench observed that our legal system subscribes to the principle of open justice and highlighted that right to access justice flowing from Article 21 of the Constitution would be meaningful only if the public gets access to the proceedings unfolding before the courts. Right to know and receive information is a facet of Article 19(1)(a) of the Constitution. Therefore, the public is entitled to witness court proceedings involving issues having an impact on the public at large or even on a section of the public.

24.1. In his concurring opinion Justice Dr. D.Y. Chandrachud (as His Lordship then was) referred to the observations of Lord Diplock in the following manner:

> **69.** Lord Diplock, speaking for the House of Lords in *Attorney General* v. *Leveller Magazine Ltd.*, remarked that open courts are a safeguard against judicial arbitrariness or idiosyncrasy. Open courts, in his view, help build public confidence in the administration of justice. The public's trust in the judicial system depends on their perception of how courts function. Open courts make it possible for the public to develop

[4] (2018) 10 SCC 639

> reasonable perceptions about the judiciary, by enabling them to directly observe judicial behaviour, and the processes and outcomes of a case.

24.2. He also referred to what Jeremy Bentham had said regarding publicity about courtroom proceedings as a mechanism to prevent improbity of Judges: it is the surest of all guards against improbity. It keeps the Judge himself, while trying, under trial.

24.3. Referring to *Naresh Shridhar Mirajkar* (supra), it was observed that various judgments of this Court have reinforced the importance of open courts. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad

proposition that in discharging functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court-room. Publicity is the very soul of justice.

24.4. Justice Chandrachud concluded that live streaming of court proceedings is a significant instrument for enhancing the accountability of judicial institutions and of all those who participate in the judicial process. It will result in the dissemination of information in the widest possible sense, imparting transparency and accountability to the judicial process. Above all, sunlight is the best disinfectant.

25. In a recent decision, this Court in *Imran Pratapgadhi Vs. State of Gujarat*[5] highlighted the importance of freedom of expression and the duty of the courts to uphold such freedom. This Court observed that sometimes Judges may not like spoken or written words but still it is the duty of the courts to uphold the fundamental right under Article 19(1)(a). Except the courts there is no other institution which

[5] 2025 SCC OnLine SC 678

can uphold the fundamental rights of the citizens. The courts must not be seen to regulate or stifle the freedom of speech and expression. This Court held thus:

> **38.** Free expression of thoughts and views by individuals or groups of individuals is an integral part of a healthy, civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows, satire and art, make the life of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are also under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights

guaranteed under Article 19(1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

39. Courts, particularly the constitutional Courts, must be at the forefront to zealously protect the fundamental rights of the citizens. It is the bounden duty of the Courts to ensure that the Constitution and the ideals of the Constitution are not trampled upon. Endeavour of the courts should always be to protect and promote the fundamental rights, including the freedom of speech and expression, which is one of the most cherished rights a citizen can have in a liberal constitutional democracy. The Courts must not be seen to regulate or stifle the freedom of speech and expression. As a matter of fact, the Courts must remain ever vigilant to thwart any attempt to undermine the Constitution and the constitutional values, including the freedom of speech and expression.

26. *Ramesh Kumaran Vs. State*[6] is a case which arose out of a dispute between two lawyers of the same Bar leading to lodging of first information reports (FIRs) by both the sides.

[6] 2025 SCC OnLine 667

While hearing the matter, this Court impressed upon the parties to put an end to the entire controversy. It was observed that the second respondent had tendered an apology to the first appellant. Thereafter, he tendered a sincere and unconditional apology not only to this Court but also to the first appellant, Bar Council and to the Bar Association. This Court therefore suggested an amicable settlement. However, the first appellant was unwilling to accept such apology and thereby compromise the proceedings. Not only that, he even went to the extent of threatening the court that if the FIR filed by him against the second respondent was quashed, he would commit suicide. It was in that context the Bench observed as under:

> **13.**.....In normal course, such threats must be taken very seriously by the Courts. Action for criminal contempt against the person giving such a threat must be initiated, which should be taken to its logical end, especially when the first appellant is a member of the Bar.
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> **14.** However, we believe that if magnanimity is to be shown by someone, the same should be done by the persons holding the highest constitutional

> office. Moreover, the first appellant has shown some repentance by tendering an unconditional apology and by giving an undertaking not to repeat such misconduct. In view of this apology and in the peculiar facts of this case, we deem it proper not to initiate any action against the first appellant.

27. The contours of criminal contempt are well delineated. Section 2(c) of the Contempt of Courts Act, 1971 defines criminal contempt as under:

> (c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which— (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

28. Definitely, if a member of the public or a litigant or for that matter even the media tries to scandalize the court by making sweeping unfounded allegations against the court or

the Judge(s) or by imputing motives against the Judge or Judges who had passed a judicial order or had conducted the court proceedings, certainly the courts would be justified to initiate criminal contempt proceedings against such contemnors. This would also be a ground to direct postponement of publication as contempt of court is a reasonable restriction enumerated under Article 19(2) on the freedom of speech and expression under Article 19(1)(a).

29. *In Re S. Mulgaokar*[7] is a classic case *qua* attitude of Judges towards contempt of court. Speaking for the Bench, Chief Justice Beg in his opening remarks said that if criticism of court proceedings or court orders is done in a reasonable manner, which pre-supposes accuracy of information about a matter on which any criticism is offered, and arguments are directed fairly against any reasoning adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous. In the ultimate analysis, the Bench while dropping the proceedings

[7] (1978) 3 SCC 339

observed that the need for appropriate norms of conduct exist in practically every sphere of life in which enlightened people strive to attain exalted ends irrespective of consequences.

29.1. In his concurring opinion Justice Krishna Iyer culled out several principles. Relevant portion of his opinion reads thus:

> **27.** The *first* rule in this branch of contempt power is a wise economy of use by the court of this branch of its jurisdiction. The court will act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The court is willing to ignore, by a majestic liberalism, trifling and venial offences — the dogs may bark, the caravan will pass. The court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt.
>
> **28.** The *second* principle must be to harmonise the constitutional values of free criticism, the

Fourth Estate included, and the need for a fearless curial process and its presiding functionary, the Judge. A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemners, be they the powerful press, gang-up of vested interests, veteran columnists of olympian establishmentarians. Not because the Judge, the human symbol of a high value, is personally armoured by a regal privilege but because "be you — the contemner — ever so high, the law — the people's expression of justice — is above you". Curial courage overpowers arrogant might even as judicial benignity forgives errant or exaggerated critics. Indeed, to criticise the Judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy For, it blesseth him that gives and him that takes. Where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking. A free people are the ultimate guarantors of fearless justice.....

29.2. Justice Iyer culled out four more principles. The *third* principle is to avoid confusion between personal protection of a libeled Judge and prevention of obstruction of public justice (and the community's confidence in that great process). While the former is not contempt, the latter is although there can be an overlapping between the two situations. According to him, the *fourth* functional canon which controls discretionary exercise of the contempt power by the court is that the media which is an indispensable intermediary between the state and the people and a necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court. The next normative guideline i.e. the *fifth* is that Judges should not be hypersensitive even when distortions and criticisms overstep the limits; Judges should deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude. Finally, and that is the *sixth* principle, after

evaluating the totality of factors, if the court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must strike a blow. This is to uphold public interest and public justice.

29.3. Justice Krishna Iyer referred to a judgment of Lord Denning and observed that it was a very valuable and remarkably fresh approach to the question of criticism of courts in intemperate language and invocation of contempt of court against the contemnor. Justice Krishna Iyer highlighted a few observations of Lord Denning as under:

> **40.** A very valuable and remarkably fresh approach to this question of criticism of courts in intemperate language and invocation of contempt of court against the contemner, a person of high position, is found in *Regina* v. *Metropolitan Police Commissioner, ex. p. Blackburn*. Lord Denning's judgment is particularly instructive in the context of the obnoxious comments made by Quintin Hogg in an article in the "*Punch*" about the members of the Court of Appeal. The remarks about the

Court of Appeal were highly obnoxious and the barbed words thrown at the Judges obviously were provocative. Even so, in a brief but telling judgment, Lord Denning held this not to be contempt of court. It is illuminating to excerpt a few observations of the learned Judge:

> This is the first case, so far as I know, where this Court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise: more particularly as we ourselves have an interest in the matter.
>
> Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.
>
> It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal

> faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political. We must rely on our conduct itself to be its own vindication.
>
> Exposed as we are to the winds of criticism, nothing which is said by this person or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."

30. Thus, the judicial attitude to the subjudice principle or interference in court proceedings or contempt of court have been clearly spelt out by this Court which we have noted. Further accretion to the analysis would only be repetitive which we should avoid. However, before moving on, we may once again remind ourselves of the profound words of this

Court expressed through the nine-Judge Bench decision in *Naresh Shridhar Mirajkar* (supra): trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice. Courts, as a public and open institution, must always remain open to public observations, debates and criticisms. Infact, courts should welcome debates and constructive criticism. Every important issue needs to be vigorously debated by the people and the press, even if the issue of debate is subjudice before a court. However, those who offer criticism should remember that Judges cannot respond to such criticism but if a publication scandalizes the court or a Judge or Judges and if a case of contempt is made out, as highlighted by Justice Iyer in the *sixth* principle, certainly courts should take action. But it is not the duty of the court to tell the media: delete this, take that down.

31. For the improvement of any system and that includes the judiciary, introspection is the key. That can happen only if there is a robust debate even on issues which are before the court. Both the judiciary and the media are the foundational pillars of democracy which is a basic feature of our Constitution. For a liberal democracy to thrive, both must supplement each other.

32. The above position has become more nuanced in the digital age. Though the contention of the appellant is that it is an intermediary in terms of Section 2(1)(w) read with Section 79 of the Information Technology Act, 2000 providing only technical infrastructure that host the platform and does not (a) publish, add or remove content on the platform, (b) decide which users are vested with certain technical privileges or (c) continually judge and censor the content posted on the platform, thereby not liable for any third party information, data, or communication link made available or hosted by it, we are not inclined to examine this aspect of the matter since it may have a bearing on the proceedings of the pending suit.

Nonetheless, we are of the firm view that the Division Bench had reacted disproportionately while issuing the impugned directions.

33. Thus, having regard to the discussions made above, we have no hesitation in our mind that such directions could not have issued. Accordingly, the impugned directions contained in para 5 of the impugned order dated 16.10.2024 are hereby set aside.

34. Appeal is allowed. However, there shall be no order as to costs.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
MAY 09, 2025.